DOCUMENT RESUME

ED 214 318 EC 141 522

AUTHOR King, John D.; Humphrey, Jackie Hance
TITLE An Analysis of Five Major Public Laws and Their Impact on the Handicapped.
INSTITUTION Texas Univ., Austin. Dept. of Special Education.
PUB DATE 78
NOTE 92p.; Print is poor in parts.

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Disabilities; Due Process; Elementary Secondary Education; Eligibility; *Federal Legislation; Individualized Education Programs
IDENTIFIERS Developmental Disabled Assist Bill of Rights Act; Education Amendments 1974; Education for All Handicapped Children Act; Rehabilitation Act 1973; Special Health Revenue Sharing Act 1975

ABSTRACT

The study developed and tested a systematic format for discovering and displaying relationships among five major federal laws concerning the handicapped: P.L. 93-112 (Rehabilitation Act of 1973), P.L. 93-380 (Education Amendments of 1974), P.L. 94-63 (Special Health Revenue Sharing Act of 1974), P.L. 94-103 (Developmentally Disabled Assistance and Bill of Rights Act), and P.L. 94-142 (Education for All Handicapped Children Act of 1975). The study examined the statutes themselves, the legislative history to discover Congressional intent, and how the laws have been incorporated into the U.S. Code. A chart depicts the preceding laws which were amended by the five laws studied and the subsequent laws which have amended these five laws. The report is in three sections. The first presents a brief historical overview of the law with a summary of each law and an explanation of the topics reviewed. The next section presents an indepth review of the five laws by topic with excerpts of the relevant texts. The final section delineates results, conclusions, and observations related to the laws and gives recommendations for further study. A narrative summary and table comparing the laws is provided for the following topic areas: eligibility criteria, services provided, procedural safeguards, and individualized written programs. (DB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED214318

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

AN ANALYSIS OF FIVE MAJOR PUBLIC LAWS AND THEIR IMPACT ON THE HANDICAPPED

John D. King, Ed.D.

Jackie Hance Humphrey, M.A.

1978

Dept of ~~Sp~~ Ed
College of Ed
U of Texas at Austin
Austin, Tex 78712

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

John D. King

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EC 141522

INTRODUCTION

Parents, educators, rehabilitation workers, mental health professionals and attorneys have dramatically increased advocacy efforts on behalf of handicapped persons since the decade of the 1960's. The Federal legislature has responded to the handicapped community by passing specific laws which have subsequently been integrated into the U. S. Statutes at Large. A review of the general index of the U. S. Code, which contains all current Federal Statutes, revealed 3 1/2 pages of citations regarding laws specifically pertaining to the handicapped, produced between the signing of the Constitution and January 20, 1971. However, between the latter date and January 18, 1976, eleven additional pages of citations were added. This represents over 300% increase in a five year period, 1971 to 1976, relative to the previous 195 years.

This proliferation of laws has made provision for the handicapped persons at all age levels and all levels of severity. Yet, insofar as each of these laws has tended to cover a specific category of service, a specific age range, and/or a specific type of disability, the total picture of Federal legislation for the handicapped has become extremely complex. New laws and amendments to existing laws continue to be passed every year, and integrated into the U. S. Code format. As the Codes are translated into executive regulations, even more information is compounded. In some instances the burgeoning bulk of laws, regulations and programs has brought about not only overlapping of services but also gaps in services provided.

Today's complex and often confusing array of codes, regulations and rules has created, among the handicapped and related professional community, a need for communication and understanding with respect to the law. Particularly since 1975 parents, professionals and consumers have been bombarded with literature related

to "Section 504" and "PL 94-142." For some people, these terms seem to convey a mysterious sense of awe and power with respect to systems change; for many others, knowledge remains limited to "legalistic" generalities. A very few persons have taken the time and effort to integrate knowledge of these legislated provisions into a global perspective on the differences and interdependencies among these and other laws impacting the lives of handicapped individuals.

Reasons for the study

Full understanding of the rights of handicapped persons, and the services and resources available to them under the law, is prerequisite to effective advocacy and support by professionals in education and related fields. Proceeding from this assumption, professionals were asked to generate an array of questions on law and the handicapped at the outset of this study. What are the legal rights of the handicapped? How extensive have the legislated provisions been in meeting the lifelong needs of the handicapped? What has been the major catalyst in accomplishing the enactment of these laws? Are there many loopholes and areas of overlap?

As the study proceeded, additional compelling questions arose. Is this or that specific mandate actually being fulfilled? Where are the services being provided? Is there any coordination for these programs? How widely are the mandates for services disseminated? It may be expected that, as existing laws are amended, as courts respond to actions involving existing laws, and as new laws are enacted, additional questions will arise. All these questions emphasize and reinforce the need for an everexpanding knowledge base and comprehension of critical legal issues.

Since beginning the study in December, 1977, the authors have discussed findings with parents, educators, lawyers, psychologists, psychiatrists, and administrators of service delivery programs for the handicapped from across the nation. Their responses have consistently indicated a need for major dissemination of information regarding services to be provided for the handicapped, responsible agencies, eligibility criteria, and general information on the legal rights of the handicapped. This report is a beginning toward providing some basic knowledge of what Congress has legislated, in addition serving as a catalyst for further knowledge and understanding regarding laws pursuant to services for the handicapped.

Purpose of the study

The purpose of the study has been to develop and test a systematic and accessible format for discovering the interrelatedness of legislation providing for the needs of the handicapped. Five major laws have been reviewed, including P.L. 93-112 (Rehabilitation Act of 1973), P.L. 93-380 (Education Amendments of 1974), P.L. 94-63 (Special Health Revenue Sharing Act of 1974), P.L. 94-103 (Developmentally Disabled Assistance and Bill of Rights Act), and P.L. 94-142 (Education for All Handicapped Children Act of 1975). These five laws were selected because of their scope and currency. Each was examined along the four topical lines of Eligibility Criteria, Services Provided, Procedural Safeguards, and Individualized Programs. The additional topical area of Legal Rights served as the "baseline" review for each piece of legislation.

The five pieces of legislation included in this study were selected because they contained major critical provisions for the handicapped. It was not necessary for a public law under consideration to exclusively address concern for the handicapped, or even to have such concern as the focal issue. For example,

sections in P.L. 93-380 (Education Amendments of 1974) dealing with the National Reading Improvement Program, Compensatory Education, and Migrant Education were closely reviewed for their implications for the mildly handicapped. Another major reason for selecting this law was the section on Family Educational Rights and Privacy, also referred to as the Buckley Amendment. This section clearly has significant implications for the legal rights and procedural safeguards of the handicapped and their families.

Format of the Study and Report

To discover what the law actually says, the statutes themselves must be examined; to capture the spirit of the law, the Legislative History must be read and analyzed. This study began with an examination of the texts of the five laws. As the texts were reviewed, sections were selected which dealt with the topical areas of services to be provided for the handicapped, eligibility requirements, procedural safeguards, and general and specific rights of the handicapped. The primary objective was to delineate what services and rights have been mandated for the handicapped. Sections dealing with funding mechanisms were specifically omitted.

After the texts of each law were examined, the Legislative History was studied to discover Congressional intent. This phase of the study gave valuable insights. For example, in many of the laws, previous Congressional mandates had clearly been either ignored or distorted. Much of the content was little more than re-enacted legislation with specific guidelines for full compliance and implementation. The following depicts the preceding laws which were amended by the five laws studied and the subsequent laws which have amended these five laws.

Table 1: PRECEDING AMENDED LAWS

Public Law	Title	93-112	93-380	94-63	94-103	94-142
65-178	Vocational Rehabilitation Act of 1917	x				
66-236	Smith-Fess Act	x				
74-271	Social Security Act	x				
74-732	Blind Persons Act (Randolph-Sheppard Act)	x				
78-113	Vocational Rehabilitation Act Amendments of 1943	x				
81-815	Schools Construction Act		x			
81-874	Assistance to Certain Local Agencies		x			
83-531	Cooperative Educational Research		x			
83-565	Vocational Rehabilitation Amendments of 1954	x				
85-864	National Defense Education Act of 1958		x			
87-692	Migrant Health Act			x		
88-164	Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963			x	x	
88-210	Vocational Education Act of 1963		x			
89-10	Elementary and Secondary Education Act of 1965		x			
89-105	Community Mental Health Centers Construction Act Amendments of 1965			x		
89-109	Community Health Centers Extension Amendments of 1965			x		
89-178	Correctional Rehabilitation Study Act of 1965	x				
89-313	Amendments to P. L. 81-815 and 874		x			
89-329	Higher Education Act of 1965		x			
89-333	Vocational Rehabilitation Act Amendments of 1965	x				
89-749	Comprehensive Health Planning and Public Health Service Amendment of 1966			x		
89-750	Elementary and Secondary Education Amendments of 1966		x			x
90-31	Mental Health Amendments of 1967			x		
90-99	Vocational Rehabilitation Amendments of 1967	x				
90-170	Mental Retardation Amendments of 1967				x	
90-174	Partnership for Health Amendments of 1967			x		
90-247	General Education Provisions Act		x			x
90-248	Social Security Amendments of 1967 (Includes Child Health Act of 1967)			x		
90-391	Vocational Rehabilitation Amendments of 1968	x				
90-574	Health Service Amendments of 1968			x		
90-576	Vocational Education Amendments of 1968		x			
91-211	Community Mental Health Centers Amendments of 1970			x		
91-230	Elementary and Secondary Education Act Amendments of 1970		x			x
91-513	Comprehensive Drug Abuse and Control Act of 1970			x		
91-515	Public Health Service Amendments of 1970			x		
91-517	Developmental Disabilities Services and Facilities Construction Amendments of 1970				x	

PRECEDING AMENDED LAWS (CONT.)

Public Law	Title	93-112	93-380	94-63	94-103	94-142
91-572	Family Planning Services and Population Research Act of 1970			x		
91-616	Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970			x		
92-255	Drug Abuse Office and Treatment Act of 1972			x		
92-318	Education Amendments of 1972		x			x
92-603	Social Security Amendments of 1972			x		
93-29	Older Americans Comprehensive Services Amendments of 1973		x			
93-45	Health Programs Extension Act of 1973			x		
93-380	Education Amendments of 1974					x
93-641	National Health Planning and Resources Development Act of 1974			x		
93-647	Social Security Amendments of 1974			x		

Table 2: SUBSEQUENT AMENDING LAWS

Public Law	Title	93-112	93-380	94-63	94-103	94-142
93-516	Rehabilitation Act Amendments of 1974	x				
93-568	White House Conference--Library and Information Services Act		x			
94-135	Older Americans Amendments of 1975		x			
94-142	Education for All Handicapped Children Act of 1975		x			
94-194	National Reading Improvement Program Act		x			
94-230	Rehabilitation Act Extension of 1976	x				
94-273	Fiscal Year Adjustment Act		x	x		x
94-278	Health Research and Health Services Amendments of 1976			x		
94-288	Helen Keller National Center for Deaf-Blind Youths and Adults	x				
94-405	Indochina Refugee Children Assistance Act of 1976		x			
94-482	Education Amendments of 1976		x			
94-562	Arthritis, Diabetes and Digestive Disease Amendments of 1976			x		
95-40	Vocational Education Act of 1963		x			
95-49	Education of the Handicapped Amendments of 1977		x			x
95-83	Public Health Service Act			x		
95-112	Education Amendments of 1977		x			
95-207	Career Education Incentive Act		x			
95-292	Social Security Act--End Stage Renal Disease Program--Improvements			x		
95-480	Departments of Labor and Health, Education, and Welfare Appropriations Act, 1979		x	x		x
95-482	Appropriations for Fiscal Year, 1979-Continuance		x			
95-561	Education Amendments of 1978		x			
95-602	Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978	x			x	

Public Law	Title	SUBSEQUENT AMENDING LAWS 93-112	93-380	94-63	94-103	94-142
95-622	Community Mental Health Centers Extension Act of 1978			x		
95-623	Health Services Research, Health Statistics, and Health Care Technology Act of 1978			x		
95-626	Health Services and Centers Amendments of 1978			x		

The third phase of the study involved an investigation of the texts of the five laws as they have been incorporated into the U. S. Code. This phase provided information about specific amendments to each of the five laws. This constant expansion and restriction of the U. S. Statutes-at-Large creates the need for ongoing study into legislated provisions which have an impact on the lives of handicapped individuals.

This report of the study is divided into three sections. The first presents a brief historical overview of the laws with a summary of each law and an explanation of the topics reviewed. The next section presents an in-depth review of the five laws by topic. The final section delineates results at this point in the study, conclusions and observations related to the laws, and recommendations for further study.

THE FIVE LAWS AND THE TOPICS

The protection of basic human rights has been a paramount concern of this nation and its elected and appointed leaders since the signing of the Constitution of the United States. This national concern expanded in scope and visibility during the 1950's through the Civil Rights movement, which demanded full recognition of the basic human rights and human dignity of every individual regardless of race, ethnic heritage, religion, sex, age, or physical characteristics. The five laws reviewed represent not only a legal and historical extension of this movement, but also a unique and distinct legislated response to the particular needs of handicapped individuals. Because the constitutional rights of the handicapped had been largely ignored or set aside due to excess costs, cultural bias and misunderstanding, inconvenience, and lack of public advocacy, these laws were passed to help remediate inequities.

THE FIVE LAWS

Rehabilitation Act of 1973, P. L. 93-112

The Vocational Rehabilitation Act of 1918 is an example of landmark legislation that has a long history of amendments extending into the current public laws. This act (P. L. 65-178) provided rehabilitation services to disabled veterans of World War I. The first amendment in 1920 was the Smith-Fess Act. P.L. 66-236, which extended the Vocational Rehabilitation Act to include civilians injured in industry. In 1935, the Social Security Act, P.L. 74-271, established on-going rehabilitation programs as part of the social security system. The Randolph-Sheppard Act in 1936 (P.L. 74-732, Blind Persons Act) mandated that Federal buildings must accommodate visually handicapped personnel, usually for the purpose of operating the food vending business. In 1943 P.L. 78-113, Vocational Rehabilitation Act Ammendments of 1943, called for expansion of rehabilitation services to the mentally retarded and mentally ill as well as the physically

handicapped. However, this provision was not funded or implemented until the late 1950's and early 1960's when Congressman John F. Kennedy pressed hard for full services for the handicapped.

Within a 25-year period, the law that originally called for retraining and prosthetic devices to be provided to disabled soldiers grew and expanded through amendments to include services to all adults 16 and over who were physically handicapped, mentally retarded or mentally ill. By 1954 P.L. 83-565, Vocational Rehabilitation Amendments of 1954, was enacted and included federal funds for training personnel, research and innovation.

P.L. 89-333, Vocational Rehabilitation Act Amendments of 1965, expanded the Vocational Rehabilitation program to serve a much larger number of handicapped individuals. Provisions for establishment of the National Center for Deaf-Blind Youths and Adults and provisions for serving disabled migrants and their families were mandated in P.L. 90-99, Vocational Rehabilitation Amendments of 1967. In August of 1967 the Vocational Rehabilitation Administration was restructured and renamed the Rehabilitation Services Administration. P.L. 90-391, Vocational Rehabilitation Amendments of 1968, extended the basic programs through 1971 and mandated a new program to serve the disadvantaged. The program for the disadvantaged was not funded until 1973. By 1971 over one million handicapped individuals were being provided vocational rehabilitation services.

Prior to 1972, vocational rehabilitation services were generally provided to those handicapped individuals who were the easiest to serve, while the more severely handicapped with greater needs for services were generally ignored or disqualified. Early in 1972 Congress began work on legislation to remedy this situation by extending rehabilitation services to individuals whose severe handicaps might prevent them from ever becoming gainfully employed. This legislation, passed by the 92nd Congress, was vetoed by President Nixon on October 27, 1972. By March 15, 1973, the 93rd Congress had agreed on a revised form of the rehabilitation legislation; however, President Nixon

also vetoed this legislation on March 27, 1973. Failure to override the Presidential veto caused Congress to restructure the legislative bills the third time. Agreement between the two houses accurred on September 13, 1973; the bill passed on September 18, and it was approved by the President on September 26, 1973. A summary of the purposes of the Rehabilitation Act of 1973 is given on page 2092 of the Legislative History.

> The key to the intent of the bill is the Committee's belief that the basic vocational rehabilitation program must not only continue to serve more individuals, but must place more emphasis on rehabilitating individuals with more severe handicaps. It is the bill's intent to be more responsive to the needs of the handicapped individual by providing a better basic program of service as well as an emphasis within special project authority for target populations whose needs are not now being met within the basic program. Additionally, the Committee has added provisions designed to focus research and training activities on making employment and participation in society more feasible for handicapped individuals.

Since P. L. 93-112 was enacted, four laws which are directly related have been passed. The first is P. L. 93-516, the Rehabilitation Act Amendments of 1974. This law strengthened some of the components of P. L. 93-112 which had earlier been compromised to assure passage and Presidential approval. The second law is P. L. 94-240, the Rehabilitation Act Extension of 1976, primarily a funding extension. The third law is P. L. 94-288, which named the Helen Keller National Center for Deaf-Blind Youths and Adults. The fourth law is P. L. 95-602, the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978. This law has modified some of the major provisions of P. L. 93-112.

Education Amendments of 1974, P.L. 93-380

The Education Amendments of 1974 extended and/or amended many earlier laws and introduced several new provisions affecting education. The laws which were extended and/or amended by P.L. 93-380 had their beginnings in an earlier law granting education assistance to certain local agencies impacted by federal employees (P.L. 81-874), a law providing for cooperative educational research among colleges, universities, and State education agencies (P.L. 83-531), the National Defense Education Act of 1958

(P.L. 85-864), the Vocational Education Act of 1963 (P.L. 88-210), and primarily by the Elementary and Secondary Education Act of 1965 (P.L. 89-10).

The 89th Congress, under the leadership of President Lyndon Johnson, had passed landmark legislation for future education that served as the basis for many of the amendments affecting the handicapped. The first comprehensive public law to deal with the total field of education was the Elementary and Secondary Education Act of 1965, P.L. 89-10. Prior to this significant legislation and its amendments the Federal Government provided educational support only for military veterans, the famous "G.I. Bill," P.L. 78-346 (Servicemen's Readjustment Act of 1944). One of the first amendments to P.L. 89-10 was to Title I, which provided grants to state agencies for providing free public education for handicapped children; thus, State operated schools received federal funds through the State agencies. The Bureau of Education for the Handicapped was a creation of one of the early amendments to P.L. 89-10 in P.L. 89-750, the Elementary and Secondary Education Amendments of 1966. It has provided leadership and effective administration in the amendments leading to provisions for special education programs for the handicapped. P.L. 89-750 also included the Adult Education Act. Additional legislation affecting education passed by the 89th Congress is the Higher Education Act of 1965, P.L. 89-329.

A series of amendments followed from 1966 to the early 70's. These included the General Education Provisions Act (P. L. 90-247), the Vocational Education Amendments of 1968 (P. L. 90-576), the Elementary and Secondary Education Act Amendments of 1970 (P. L. 91-230), the Education Amendments of 1972 (P.L. 92-318), and the Older Americans Comprehensive Services Amendments of 1973 (P.L. 93-29). It is interesting to note that special education legislation expanded during the Johnson administration but faltered markedly from 1968 to 1974. As an example, the Bureau of Education for the Handicapped was weakened during this period by a

process of bureaucratic layering and the centralization of control within the Office of Education. This was not the intent of the amendments from which it was created by Congress in 1967.

The intent of the Legislative subcommittee in P.L. 93-380 was to restructure and reaffirm the Bureau of Education for the Handicapped as a strong viable administrative unit relative to progress and problems concerning the education of handicapped children. Also included in this law were provisions for the Bilingual Education Act, the Equal Educational Opportunities Act of 1974, the Community Schools Act, the Special Projects Act, the Women's Educational Equity Act of 1974 and the Family Educational Rights and Privacy Act of 1974.

The main provisions of P.L. 93-380 are stated in the Legislative History (pages 4093-4094). It should be noted that the Family Educational Rights and Privacy Act of 1974 was added after these purposes had been stated and therefore, the provisions of this critical addition to the final form of the law as enacted are omitted from this statement of provisions.

> (1) An extension of the Title I, ESEA, program for three more years, an updating of its formula for the distribution of funds, and the inclusion of several improvements in its administration;
> (2) A conditional consolidation of seven categorical Federal aid programs into two broad purpose consolidated programs;
> (3) An extension of the impact aid programs for one additional year and several improvements in its provisions;
> (4) An extension of the Adult Education Act, including several amendments;
> (5) The creation of a new community education program;
> (6) An extension of the Education of the Handicapped Act, including several amendments dealing with the program and with the Federal administration of the program;
> (7) An extension of the Bilingual Education Act, including several amendments;
> (8) Several amendments to the General Education Provisions Act;
> (9) Miscellaneous amendments dealing with the Emergency School Aid Act, the treatment of Puerto Rico in distributing Federal aid, Indian education programs, advisory councils, and HEW audits;
> (10) A study of the effects of late funding of education programs;
> (11) A study of athletic safety;
> (12) A study of crime and violence in the nation's elementary and secondary schools; and
> (13) An authorization for the calling of a White House Conference on Education in 1978.

Legislation passed subsequent to P.L. 93-380 amended the provisions by extending and/or expanding them. Subsequent legislation related to the Adult Education Amendments in P.L. 93-380 are the Older Americans Amendments of 1975 (P.L. 94-135), the Fiscal Year Adjustment Act (P.L. 94-273), the Indochina Refugee Children Assistance Act of 1976 (P.L. 94-405), the Education Amendments of 1976 (P.L. 94-482), amendments to the Vocational Education Act of 1963 (P.L. 95-40), the Education Amendments of 1977 (P.L. 95-112), the Career Education Incentive Act (P.L. 95-207), the Departments of Labor and Health, Education, and Welfare Appropriations Act, 1979 (P.L. 95-480), the Appropriations for Fiscal Year, 1979-Continuance (P.L. 95-482), and the Education Amendments of 1978 (P.L. 95-561). The laws related to amendments for education of the handicapped are the Education for All Handicapped Children Act of 1975 (P.L. 94-142) and the Education of the Handicapped Amendments of 1977 (P.L. 95-49). Since major provisions affecting the handicapped are included in P. L. 94-142, this law will be presented separately in this paper. Amendments to the Family Educational Rights and Privacy Act are included in the White House Conference - Library and Information Services Act (P. L. 93-568) which was approved on December 31, 1974, retroactively effective to November 18, 1974. The National Reading Improvement Program Act (P.L. 94-194) amended Title VII of P.L. 93-380.

Special Health Revenue Sharing Act of 1975, P.L. 94-63

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164) provided funding and guidelines for the establishment of Community Mental Health Centers. In the years that followed, the nation was administratively divided into 1500 catchment areas, determined by population and geographic distribution, for the purpose of providing community based programs for mentally ill individuals. The Mental Health Amendments of 1967 (P.L. 90-31) changed the focus from construction of facilities to staffing needs.

By 1975 only one-third of the ultimate goal of P.L. 90-31 had been reached and yet the President wanted Federal support to be withdrawn. The Special Health Revenue Sharing Act of 1975, P.L. 94-63 was passed originally as two separate bills by the 93rd Congress. Its purpose was to provide continued support for the Community Mental Health programs. After Congress adjourned President Ford pocket vetoed both bills. In his memorandum of disapproval, President Ford stated that the financial burden on the taxpayers would be unjustifiable. He claimed that the Medicare and Medicaid programs could handle the needs of the Community Mental Health Centers, Migrant Health Centers, and Community Health Centers and that existing funds for higher education could cover nurse training program needs. His veto was supported by the Department of Health, Education and Welfare. On July 14, 1975, the Senate agreed to the conference report on P.L. 94-63 and on July 16 the House agreed to the conference report. The President vetoed the bill on July 26. That same day the Senate overrode his veto and on July 29, 1975, the House overrode the veto. The rapid override of the Presidential veto served to communicate to the President that Congress was pleased with the success of the Community Mental Health Centers and fully intended to assure increased success in these programs.

P.L. 94-63, is unique among the five laws studied for its emphasis upon health care rather than education and training. However, these Public Health Service Act amendments and provisions contain implications for the handicapped relating to the topics of Eligibility Criteria and Services Provided. For example, it is the first law to prioritize services to mentally ill children in settings other than educational. Pages 506 and 507 of the Legislative History give a summary of the major provisions of the law.

> 1. *Community Health Centers.*—Authorizes for 2 years grants for the planning and development and operation of community health centers and other entities, including existing neighborhood health centers, which would offer a medically underserved population a broad range of ambulatory, medical care referral, and environmental health services.

2. *Migrant Health Centers.*—Authorizes planning and development and operation grants to migrant health centers and other entities which would offer a broad range of health services—including ambulatory medical, referral, and environmental health—in an area in which not less than 6,000 migrants and their families reside. Would also provide certain assistance to entities which do not meet the minimum migrant population requirement. Includes a separate authorization to cover the reasonable costs of inpatient and outpatient hospital services for migrants.

3. *Community Mental Health Centers.*—Extends the Community Mental Health Centers Act to continue progress toward the goal of establishing a center in each of the approximately 1,500 catchment areas across the Nation, and to assure continued support of the 500 centers already begun. Also revises the Act to consolidate all the existing grant authorities into programs of grants for planning and development, start-up costs including costs of construction and renovation, and initial operating costs. All centers are required to move toward comprehensive services which include the five essential services under the current program plus half-way house services and specialized services to children, the elderly, alcoholics and drug dependent persons. In addition, Centers which have come to the end of their eight year initial operation support may be provided up to three additional years of financial distress grants for the difference between costs and payments from non-Federal resources. A special grant program for consultation and education is established.

4. *Health Revenue Sharing.*—Extends existing section 314 (d) of the Public Health Service Act for two years with a total authorization of $160 million per year, of which 22 percent each year would be for allocations to the States through the 314 (d) formula for purposes of screening, detection, diagnosis and treatment of hypertension.

5. *Family Planning Programs.*—Extends the authorizations of appropriations in Title X of the Public Health Service Act and clarifies that population research shall be conducted under the authorities of that title. Also incorporates in Title X the requirement of an annual plan to carry out family planning programs.

6. Section 317 of the PHS Act is also extended for one year with increased authorization level and expanded to provide support for control of diseases borne by rodents as well as communicable diseases.

7. *Home Health Services.*—Establishes a demonstration program of start up grants to home health agencies and grants for training personnel to provide home health services.

8. Establishes a Committee on Mental Health and Illness of the Elderly for a one year period to review the mental health needs of the elderly and recommend policy for the care and treatment of mentally ill aged persons.

9. *Rape Prevention and Control.*—Establishes a new center within the National Institute for Mental Health to study the causes, control and treatment of rape and to establish a clearing-house of information on these subjects. In addition, the bill provides support for demonstration projects in the prevention and control of rape.

10. *Epilepsy.*—Establishes a temporary Commission appointed by the Secretary of the Department of Health, Education, and Welfare to advise Congress and the President on a comprehensive national plan for the control of Epilepsy and its consequences, and the role of State and Federal government in research on Epilepsy and on the identification, treatment and rehabilitation of persons with Epilepsy.

11. *Huntington's Disease.*—Establishes a temporary Commission appointed by the Secretary of the Department of Health, Education, and Welfare to advise Congress and the President on a comprehensive national plan for the control of Huntington's Disease and its consequences, and the role of State, and Federal government in research on Huntington's Disease and on the identification, treatment and rehabilitation of persons with Huntington's Disease.

> 12. *Hemophilia.*—Establishes a new hemophilia diagnosis and treatment program under the Public Health Service Act. Provides grants to establish treatment centers for hemophilia and to establish and expand blood separation centers to provide blood products needed for the treatment of hemophilia.

The Home Health Services, Community Health Centers, and Migrant Health Centers provide alternative resources for diagnostic and treatment services for the handicapped. The availability of these alternatives for services is especially important since only one-third of the catchment areas had Community Mental Health Centers available for mentally handicapped individuals at the time the law was enacted. Although this paper will primarily focus on the provisions for Community Mental Health Centers, it is important to remember that services mandated through other health care laws (see pages 5 and 6 of Chapter One for preceding laws) are available to handicapped as well as non-handicapped individuals.

Subsequent to the enactment of P.L. 94-63, Congress has expanded the provisions of this law in P.L. 94-273 (Fiscal Year Adjustment Act), P.L. 94-278 (Health Research and Health Services Amendments of 1976), P.L. 94-562 (Arthritis, Diabetes, and Digestive Disease Amendments of 1976), P.L. 95-83 (Public Health Service Act), P.L. 95-292 (Social Security Act - End Stage Renal Disease Program - Improvements), P.L. 95-480 (Departments of Labor and Health, Education and Welfare Appropriations Act, 1979), P.L. 95-622 (Community Mental Health Centers Extension Act of 1978), P. L. 95-623 (Health Services Research, Health Statistics, and Health Care Technology Act of 1978), and P. L. 95-626 (Health Services and Centers Amendments of 1978).

Developmentally Disabled Assistance and Bill of Rights Act, P.L. 94-103

The present developmental disabilities program, P.L. 94-103, Developmentally Disabled Assistance and Bill of Rights Act, began as Title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164). It was amended in 1967 with a three-year extension as covered in P.L. 90-170, Mental Retardation Amendments of 1967. The Act was substantially broadened to include other

developmental disabilities in addition to mental retardation by P.L. 91-517, Developmental Disabilities Services and Facilities Construction Amendments of 1970.

The Developmentally Disabled Assistance and Bill of Rights Act, P.L. 94-103 was originally passed by the House near the end of the 93rd Congress in the form of House Resolution 14215. Since a conference on the bill was not completed before the end of the session, the 94th Congress reconsidered the bill as House Resolution 2955 which was amended and passed as House Resolution 4005. This final form of the bill was passed by the House on September 18, 1975, and by the Senate on September 23, 1975, and was approved by the President on October 4, 1975.

The P.L. 94-103 amendments include prenatal care to high risk families, full services from birth through death of all developmentally disabled, and support services for their families. The major revisions of the law are listed on pages 919 and 920 of the Legislative History.

1. Continues with minor modifications existing authority for grants for operating university-affiliated facilities for the developmentally disabled;
2. Creates a new special project authority and substitutes for the existing ten per centum earmark of state allotments for projects of special national significance a new thirty per centum earmark of the new special project authority for such projects;
3. Requires that States spend a specified percentage of their allotments for programs for deinstitutionalization of persons with developmental disabilities inappropriately placed in institutions;
4. Eliminates requirements for Federal approval of individual construction projects funded with state grant funds;
5. Adds autism and dyslexia specifically to the list of diseases for which the special project and State allotment programs are to provide services; and
6. Requires studies by the Secretary of HEW to determine the neurological diseases which should and should not be considered as developmental disabilities, and the adequacy of services for persons with diseases not included.

The provisions of this law are comprehensive. They include an extended scope of services from birth to death for all persons with developmental disabilities. The concept of follow-along services to provide for continuity in programs (as opposed to the termination of services suggested in the use of the term "follow-up") and the provision of advocacy programs to protect the rights of the developmentally disabled

are further extended by P.L. 95-602, Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978.

Education for All Handicapped Children Act of 1975, P.L. 94-142

The Education for All Handicapped Children Act of 1975 was introduced to the 94th Congress as Senate Bill 6 on January 1, 1975. This bill was an extension of the Education of the Handicapped Act, Title VI, Part B, of P.L. 93-380, the Education Amendments of 1974. The history of this Act extends back to P.L. 89-750, the Elementary and Secondary Education Amendments of 1966 and includes provisions from P.L. 90-247, the General Education Provisions Act, P.L. 91-230, the Elementary and Secondary Education Act Amendments of 1970, and P.L. 92-318, the Education Amendments of 1972.

P.L. 94-142 was originally introduced to Congress on May 16, 1972 as Senate Bill 3614. On January 1, 1974, and again on January 1, 1975, it was introduced as Senate Bill 6. Senate Bill 6 was passed by the House on November 18, 1975, and by the Senate on November 18, 1975, and was approved on November 29, 1975. This approval finalized a statement of the rights of handicapped children to a free, appropriate, public education which had taken three and one-half years from original introduction to final modification and passage.

The Education for All Handicapped Children Act of 1975, P.L. 94-142, provides for the identification, assessment, and placement of handicapped children within an individualized educational program. This legislation was a response to more than 36 court cases in recent years in which the States have been forced to recognize the rights of handicapped children to receive an appropriate education. The States have made an effort to comply; however, lack of financial resources has prevented the implementation of services as decreed by the courts. Due to the sanctions imposed by P.L. 94-142 and subsequent authorizations and appropriations, States are compelled to provide full free public educational services to all handicapped children. This is primarily an amendment for funding earlier legislation, notably P.L. 93-380, Education Amendments of 1974, Part B, Education of the Handicapped. P.L. 94-142 has been extended by the

Fiscal Year Adjustment Act, P.L. 94-273, the Education of the Handicapped Amendments of 1977, P.L. 95-49, and the Departments of Labor and Health, Education, and Welfare Appropriations Act of 1979, P.L. 95-480.

A review of the Constitutional process shows that what has happened in the area of special education with landmark laws and subsequent amendments is common to the total legislative process. In practice, influence groups have helped shape and change original laws by calling for amendments. However, there appears to have been no successful monitoring of similar provisions in amendments, other than the interaction between and within the two houses and Congress usually limited to the efforts of separate and joint committees and the staffs.

THE TOPICS

The singular examination of any of these laws creates a skewed impression of the totality of provisions, and it is only when all five laws are reviewed concomitantly that the full impact of the legal rights of the handicapped can be understood. In this paper, these five laws are reviewed from topical points including Legal Rights, Eligibility Criteria, Services Provided, Procedural Safeguards, and Individualized Programs. However, because the topic of Legal Rights is pervasive to the other topics, it is not treated separately.

Within the context of Legal Rights the basics of constitutional guarantees are made available to all human beings in their pursuit of life, liberty and happiness. Specific rights are delineated in the Bill of Rights and the 13th, 14th, 15th, 19th and 25th amendments to the Constitution. These Federal and State civil and legal rights, which may be ultimately enforced in a court of law, include the right to equal protection of the law, and the right to be protected by due process. Laws are effective in protecting basic rights because they call for specific levels of funding or include sanctions for compliance.

Eligibility Criteria

The criteria for eligibility is an example of a topic which appears in all five laws and is backed by both funding and sanctions. The topic of eligibility is restrictive when reviewed in any one of the five laws, but comprehensive when examined across the laws. For example, the issue of exclusions from eligibility is specific in P.L. 93-112, Rehabilitation Act of 1973, and not present in the other four laws. Conversely, screening for determining eligibility is specifically stated in all the laws except P.L. 93-112. Eligibility is provided for across the laws and includes definitions of the populations to be served, as stated within each of the laws, as well as the establishment of criteria for determining needs.

Services Provided

Services Provided is a broad, all-encompassing topic which has references across all five of the laws and more. There is an array of complementary laws specific to unique services such as P.L. 93-516 (Rehabilitation Act Amendments of 1974) which provides for pre-training and annual re-evaluation of ineligible applicants as determined through provisions in P.L. 93-112. An examination of the concomitancy of services provided in these five laws reveals that the omission of the service under one law is specifically included in one or more of the other four laws. For example, under P.L. 94-142 medical services are provided only for diagnostic and evaluation purposes. However, in P.L. 93-112, P.L. 94-63, and P.L. 94-103 on-going medical services must be provided to all handicapped individuals as defined by each of these laws. Therefore, when considered totally, the legislative response to the needs of the handicapped has provided a framework for delivery of full services to the handicapped and their families.

Procedural Safeguards

Procedural Safeguards in the five laws focus on routine but important personal issues that effect the quality of life of the handicapped. The U.S. Constitution

is the basis for these rulings which provides in the Fifth Amendment that no person shall "be deprived of life, liberty, or property, without due process of law". The Fourteenth Amendment notes that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States without due process of law." For example, issues such as confidentiality are comprehensively attended to in P.L. 93-380 and P.L. 94-142 but only briefly mentioned in P.L. 94-63 and P.L. 94-103. This issue is left only to subtle interpretation in P.L. 93-112. A statement in point is found in Title I, Sec. 101 (a)(18) of P.L. 93-112 (29 U.S. Code 721 as amended by P.L. 95-602):

> (18) provide satisfactory assurances to the Secretary that the State agency designated pursuant to clause (1) (or each State agency if two are so designated) and any sole local agency administering the plan in a political subdivision of the State will take into account, in connection with matters of general policy arising in the administration of the plan, the views of individuals and groups thereof who are recipients of vocational rehabilitation services (or, in appropriate cases, their parents or guardians), personnel working in the field of vocational rehabilitation, and providers of vocational rehabilitation services.

This is paradoxical when reviewing P.L. 93-112 which has some of the most stringent language concerning discrimination of all the laws, e.g., Sec. 504. (29 U.S. Code 794 as amended by P.L. 95-602):

> Sec. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(7), shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

Individualized Program

The concept of an individualized written plan was originally included as a part of P.L. 93-112 for vocational rehabilitation clients. The Individualized Written Educational Program had its beginning as a provision in services for the educationally deprived in the 1973 House Bill for Title I schools. The Senate receded with amendments which provided for the encouragement of such plans (as reported in the Legislative History of P.L. 93-380) but did not mandate specific, written plans on each child. The issue of individualized written plans is spelled out specifically in P.L. 94-103, the Developmentally Disabled Assistance and Bill of Rights Act, and is treated comprehensively in P.L. 94-142, the Education For All Handicapped Children Act of 1975.

The Legal Rights germaine to services provided for the handicapped did not in themselves provide an effective means for tailoring programs to individual needs. Information was supplied to the Committee writing P.L. 93-112 by members of HEW stating that a written program with a required annual review by the handicapped individual and the counselor would help assure that the rights of the individual were being met in an appropriate manner. One purpose of this program was to assure client participation in the decision making regarding services. In effect, the individualized written program was to be a statement of understanding between the commission and the handicapped individual.

Public Law 94-63 mentions an individualized written plan only in connection with the hemophilia programs (Sec. 1131 (a)(6) and 42 U.S. Code 300c-21). The major focus of this law is on fostering coordination between various agencies, bringing comprehensive community mental health care to all in need of such care, and developing a system of care which insures continuity of care for all patients. The long term goal is to establish a network of comprehensive mental health services across the nation. However, in the coordinating effort with other agencies the concept and practice of

developing Individualized Written Plans as provided by the other laws will eventually apply to these services, once again demonstrating the interrelationship of these five laws.

The 93rd and 94th Congresses became the catalysts for implementing many provisions for the handicapped through amendments that affected laws extending back over many years. Congressional committees heard testimony from parent groups, handicapped individuals, representatives from Federal and State courts, State legislators and executives, educators and others, reaffirming that legal rights and services must be provided to all handicapped individuals. The 95th Congress has continued to expand these provisions so that no handicapped individual is denied the protection and services mandated.

This chapter has presented a brief description of each law and its related legislative history, and has described the topics which have served as guidelines in our study of the laws. The next chapter will present the five laws, in-depth, by each of the topics represented in each law.

CHAPTER THREE

REVIEW OF THE FIVE LAWS BY TOPICS

This section will be an in-depth review of each law in reference to each of the four topics. The topic of Legal Rights will underpin the other topical areas.

REHABILITATION ACT OF 1973, P. L. 93-112

The Rehabilitation Act of 1973, P.L. 93-112, was the first of these five laws to be enacted and contains one of the most forceful statements on discrimination against the handicapped. This law contains many important and controversial changes which include provisions for individuals with severe handicaps, provisions related to the lack of services to individuals with the most severe handicaps and who lack identifiable vocational goals, response to the decreased emphasis on research and training, increased emphasis on populations whose needs were previously not being met, sanctions against employment discrimination, impetus for studies concerning the adequacy of housing and transportation services and access, and mandates to correct the failure of leadership by Federal agencies in the area of vocational rehabilitation.

Eligibility Criteria

The topic of Eligibility Criteria is delineated by the definitions given within the law and is responsive to specific stated needs (Sec. 7 and 29 U.S. Code 706 as amended by P.L. 93-516 and P.L. 95-602).*

> (7)(A) Except as otherwise provided in subparagraph (B), the term "handicapped individual" means any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to sub-chapters I and III of this chapter.

(B) Subject to the second sentence of this subparagraph, the term "handicapped individual" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(13) The term "severe handicap" means the disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction, and any other disability specified by the Secretary in regulations he shall prescribe.

This is a relatively straight-forward definition of handicapped with its definitive listing of conditions. However, it goes beyond traditional boundaries by stating "any other disability," which makes the definition totally comprehensive. It will not take the legal system long to recognize and establish the necessary case law for awarding benefits and service to all handicapped individuals.

Title I of this Act establishes the Eligibility Criteria specifying that (1) no residence requirement can be imposed, (2) information concerning services, assistance, and benefits will be available to clients, (3) clients shall not be discouraged from applying for services and (4) preparation of ineligible individuals to accomplish eligibility for a given program of rehabilitation will be provided. (Part A. Sec. 101(a) and 29 U. S. Code 721):

(14) provide that no residence requirement will be imposed which excludes from services under the plan any individual who is present in the State;

(Part B. Sec. 112 and 29 U. S. Code 732 as extended by P. L. 93-561, P. L. 94-230, and P. L. 95-602).

> (a) From funds appropriated under section 310 of this title for special projects and demonstration in excess of $11,860,000 the Secretary shall set aside no less than $3,500,000 for the fiscal year ending September 30, 1979, and for each of the three succeeding fiscal years, to establish in geographically dispersed regions client assistance pilot projects (hereinafter in this section referred to as "projects") to provide counselors to inform and advise all clients and client applicants in the project area of all available benefits under this chapter and, upon requests of such client or client applicant, to assist such clients or applicants in their relationships with projects, programs, and facilities providing services to them under this chapter, including assistance in pursuing legal, administrative, or other appropriate remedies to insure the protection of the rights of such individuals under this Act. In the event that funds so appropriated under section 774 of this title do not exceed $11,860,000 in any fiscal year, the Secretary is authorized to utilize such funds to carry out this section.

> (5) Reasonable assurance shall be given by the appropriate State agency that all clients or client applicants within the project area shall have the opportunity to receive adequate service under the project and shall not be pressured against or otherwise discouraged from availing themselves of the services available under such project.

The Committee on Labor and Public Welfare, to whom the bill was referred for amendments, had clear intentions as noted by their discussion. The Committee found there was a large segment of the handicapped population that could not be served under the existing program parameters due to the fact that no vocational goal could be forseen, or might not seem achievable "at the time" the individual attempted to enter the program. Members of the Committee stressed that severely handicapped individuals should have vocational goals developed for them. In final form the bill calls for approaches to preparing individuals for programs which can improve their ability to live more independently. A comprehensive study mandated in in Part D. Sec. 130 (29 U.S. Code 750) has been completed and resulted in the provision of a new Title III - COMPREHENSIVE SERVICES FOR INDEPENDENT LIVING included in P.L. 95-602 (Sec. 701 and 29 U.S. Code 796):

> Sec. 701. The purpose of this title is to authorize grants (supplementary to grants for vocational rehabilitation services under title 1) to assist States in providing comprehensive services for independent living designed to meet the current and future needs of individuals whose disabilities are so severe that they do not presently have the potential for employment but may benefit from vocational rehabilitation services which will enable them to live and function independently.

Services Provided

Services Provided is a topic that the Committee discussed from a novel point of view. They wanted the amendments to remain vocationally oriented but recognized there would be individuals so severely handicapped they would never achieve employment. The Committee felt they should not be denied services. They recognized that an outcome of services to this population could mean freeing other members of the individual's family to return to employment. This notion is extended into the final definition of the law covering services. (Sec. 7 and 29 U.S. Code 706 as amended by P.L. 95-602):

> (5) The term "evaluation of rehabilitation potential" means, as appropriate in each case:
>
> (A) a preliminary diagnostic study to determine that the individual has a substantial handicap to employment, and that vocational rehabilitation services are needed;
>
> (B) a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;
>
> (C) an appraisal of the individual's patterns of work behavior and ability to acquire occupational skill, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(D) any other goods or services provided for the purpose of ascertaining the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services;

(E) referral;

(F) the administration of these evaluation services; and

(G) (i) the provision of vocational rehabilitation services to any individual for a total period not in excess of eighteen months for the purpose of determining whether such individual is a handicapped individual, a handicapped individual for whom a vocational goal is not possible or feasible (as determined in accordance with section 102(c)), or neither such individual; and (ii) an assessment, at least once in every ninety-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in subclause (i) may be made.

The definitions range from diagnosis of the handicap to a time frame, and include assessment of the relationship of the handicap to employment, appraisal of capacity to perform in a work environment, and referral. As noted in the law, gainful employment is the purpose and end goal. (Sec. 100 and 29 U. S. Code 720):

SEC. 100. (a) The purpose of this title is to authorize grants to assist States to meet the current and future needs of handicapped individuals, so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

Title I, Part A speaks to the specifics of the general provision of the law. (Sec. 101(a) and 29 U.S. Code 721 as amended by P.L. 95-602):

(11) provide for entering into cooperative arrangements with, and the utilization of the services and facilities of, the State agencies administering the State's public assistance programs, other programs for handicapped individuals, veterans programs, manpower programs, and public employment offices, and the Social Security Administration of the Department of Health, Education, and Welfare, the Veterans' Administration, and other Federal, State, and local public agencies providing services related to the rehablitation of handicapped individuals (specifically including arrangements for the coordination of services to individuals eligible for services under this Act, the Education of the Handicapped Act, and the Vocational Education Act).

Although the primary agency for delivering rehabilitation services is Rehabilitation Services Administration, these services must be coordinated with other public agencies. Sec. 103 of Title I of this law describes the full scope

of services necessary but is not limited to those listed. (29 U.S. Code 723 as amended by P.L. 95-602):

> Sec. 103. (a) Vocational rehabilitation services provided under this Act are any goods or services necessary to render a handicapped individual employable, including, but not limited to, the following:
>
> (1) evaluation of rehabilitation potential, including diagnostic and related services, incidental to the determination of eligibility for, and the nature and scope of, services to be provided, including, where appropriate, examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders, or by a licensed psychologist in accordance with State laws and regulations, or both;
>
> (2) counseling, guidance, referral, and placement services for handicapped individuals, including followup, follow-along, and other postemployment services necessary to assist such individuals to maintain their employment and services designed to help handicapped individuals secure needed services from other agencies, where such services are not available under this Act;
>
> (3) vocational and other training services for handicapped individuals, which shall include personal and vocational adjustment, books, and other training materials, and services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals: Provided, That no training services in institutions of higher education shall be paid for with funds under this title unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;
>
> (4) physical and mental restoration services, including, but not limited to, (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or substantially reduce the handicap within a reasonable length of time, (B) necessary hospitalization in connection with surgery or treatment, (C) prosthetic and orthotic devices, (D) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select, (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals suffering from end-stage renal disease, and (F) diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with State licensure laws;
>
> (5) maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;

(6) interpreter services for deaf individuals, and reader services for those individuals determined to be blind after an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(7) recruitment and training services for handicapped individuals to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services and orientation and mobility services for the blind;

(9) occupational licenses, tools, equipment, and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service; and

(11) telecommunications, sensory, and other technological aids and devices.

Although the bulk of services provided are individually oriented, group services are also available as noted below. (Sec. 103 and 29 U.S. Code 723 as amended by P.L. 95-602):

(b) Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(1) in the case of any type of small business operated by individuals with the most severe handicaps the operation of which can be improved by management services and supervision provided by the State agency, the provision of such services and supervision, along or together with the acquisition by the State agency of vending facilities or other equipment and initial stocks and supplies;

(2) the construction or establishment of public or nonprofit rehabilitation facilities and the provision of other facilities and services <u>(including services offered at rehabilitation facilities)</u> which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation written program of any one handicapped individual;

<u>(3) the use of existing telecommunications systems (including telephone, television, satellite, radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programming to meet the particular needs of handicapped individuals; and</u>

<u>(4) the use of services providing recorded material for the blind and captioned films or video cassettes for the deaf.</u>

In effect this provision creates employment where it would not otherwise exist and where private sector efforts would not sustain. The provision of services is not to be terminated once employment is achieved. On-going evaluation of the appropriateness of the employment to the needs and abilities of the handicapped is mandated in Sec. 101(a) (29 U. S. Code 721).

> (16) provide for (A) periodic review and reevaluation of the status of handicapped individuals placed in extended employment in rehabilitation facilities (including workshops) to determine the feasibility of their employment, or training for employment, in the competitive labor market, and (B) maximum efforts to place such individuals in such employment or training whenever it is determined to be feasible;

This on-going evaluation is also mandated in Title V which calls for affirmative action in employment of handicapped individuals by governmental agencies (Sec. 501(b) and 29 U. S. Code 791).

> (b) Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after the date of enactment of this Act, submit to the Civil Service Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

The Committee called for funding a previously mandated, highly creative provision which remained in the final law under Title III, Sec. 312. (29 U.S. Code 777b as amended by P.L. 95-602):

> (c) The Secretary, subject to the provisions of section 306, is authorized to make grants to any State agency designated pursuant to a State plan approved under section 101, or to any local agency participating in the administration of such a plan, to pay up to 90 per centum of the cost of projects or demonstrations for the provision of vocational rehabilitation services to handicapped individuals, as determined in accordance with rules prescribed by the Secretary of Labor, who are migratory agricultural workers or seasonal farmworkers, and to members of their families

> (whether or not handicapped) who are with them, including maintenance and transportation of such individuals and members of their families where necessary to the rehabilitation of such individuals. Maintenance payments under this section shall be consistent with any maintenance payments made to other handicapped individuals in the State under this Act. Such grants shall be conditioned upon satisfactory assurance that in the provision of such services there will be appropriate cooperation between the grantee and other public or nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families. This subsection shall be administered in coordination with other programs serving migrant agricultural workers and seasonal farmworkers, including programs under title I of the Elementary and Secondary Education Act of 1965, section 311 of the Economic Opportunity Act of 1964, the Migrant Health Act, and the Farm Labor Contractor Registration Act of 1963.

This provision finally received appropriations even though it was originally introduced in 1967 by President Johnson and the 89th Congress in their efforts to expand rehabilitation programs. The provision was made law in 1968 and was authorized, but had never been funded.

Coordination of services with local education and higher education agencies was introduced in this law, Title IV, Section 405, (a) (4) and (29 U.S. Code 785). This concern for coordination was restated in P.L. 95-602 in the purposes of the National Institute of Handicapped research (Sec. 200 and 29 U.S. Code 760) and in Sec. 204(b) (29 U.S. Code 764).

> "(1) Establishment and support of Rehabilitation Research and Training Centers to be operated in collaboration with institutions of higher education for the purpose of (A) providing training (including graduate training) to assist individuals to more effectively provide rehabilitation services, (B) providing coordinated and advanced programs of research in rehabilitation, and (C) providing training (including graduate training) for rehabilitation research and other rehabilitation personnel. The research to be carried out at each Center shall be determined on the basis of the particular needs of handicapped individuals in the geographic area served by the Center, and may include basic or applied medical rehabilitation research, research regarding the psychological and social aspects of rehabilitation, and research related to vocational rehabilitation. The Centers shall be encouraged to develop practical applications for the findings of their research. Grants may include funds for services rendered by such a center to handicapped individuals in connection with such research and training activities.";

The Committee was keenly aware of not only attitudinal barriers, but also enormous physical barriers to the mobility of the handicapped. Their point was that even if maximum employment opportunities for the handicapped were created, they could not be filled without the ability of the handicapped to get to their jobs. The Committee stated that is imperative that handicapped individuals be given the opportunity to move freely wherever they must integrate themselves. The issue is carried forward in Title V. Sec. 502. (29 U. S. Code 792):

> (c) The Board shall also (1) (A) determine how and to what extent transportation barriers impede the mobility of handicapped individuals and aged handicapped individuals and consider ways in which travel expenses in connection with transportation to and from work for handicapped individuals can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and (B) consider the housing needs of handicapped individuals; (2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems, (A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems and (B) to make housing available and accessible to handicapped individuals or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for handicapped individuals, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

Finally, a unique and highly specialized service introduced in 1967 by P. L. 90-99 was restated in Title III, Sec. 305 to provide for Deaf Blind Youths and Adults. (29 U. S. Code 775 as extended by P. L. 93-516, P. L. 93-651, P. L. 94-230, and P. L. 94-288 and restated by P. L. 95-602.)

> "SEC. 313. (a) The purpose of this section is to provide for the establishment and operation of the Hellen Keller National Center for Deaf-Blind Youths and Adults. Any funds appropriated under this part for construction of the Center shall remain available until expended.
>
> "(b) In order—
>
> "(1) to demonstrate methods of (A) providing the specialized intensive services, and other services, needed to rehabilitate handicapped individuals who are both deaf and blind, and (B) training the professional and allied personnel needed adequately to staff facilities specifically designed to provide such services and training to such personnel who have been or will be working with deaf-blind individuals;
>
> "(2) to conduct research in the problems of, and ways of meeting the problems of rehabilitating, deaf-blind individuals; and

> "(3) to aid in the conduct of related activities which will expand or improve the services for or help improve public understanding of the problems of deaf blind individuals;
>
> the Secretary, subject to the provisions of section 306, is authorized to enter into an agreement with any public or nonprofit agency or organization for payment by the United States of all or part of the costs of the establishment and operation, including construction and equipment, of a center for vocational rehabilitation of handicapped individuals who are both deaf and blind, which center shall be known as the Helen Keller National Center for Deaf-Blind Youths and Adults
>
> "(c) Any agency or organization desiring to enter into such agreement shall submit a proposal therefor at such time, in such manner, and containing such information as may be prescribed in regulations by the Secretary. In considering such proposals the Secretary shall give preference to proposals which (1) give promise of maximum effectiveness in the organization and operation of the Helen Keller National Center, and (2) give promise of offering the most substantial skill, experience, and capability in providing a broad program of service, research, training, and related activities in the field of rehabilitation of deaf-blind individuals.
>
> "(d) To the extent feasible the Helen Keller National Center for Deaf-Blind Youths and Adults shall seek to recover from States, private insurers, and other participating public and private agencies the costs of services provided to individuals by the Center.
>
> "(e) There are authorized to be appropriated to carry out this section such sums as may be necessary for each fiscal year beginning before October 1, 1982.

The Committee was impressed with plans for the Center and urged that the techniques or methods for providing services for deaf-blind be transportable to the entire population of such individuals. Schools and other institutions which provide services to this low-incidence population were encouraged to enter into cooperative agreements with the National Center.

Procedural Safeguards

In one sense, procedural safeguards constitute appropriate administrative due process procedures that include at least the minimum protection of individual rights. Due process procedures should be based on a combination of formal procedures and informal negotiation. P. L. 93-112 takes a pedantic posture toward these safeguards but includes the most far reaching issues and sanctions for the handicapped.

In Title I, Part A, Sec. 101(a)(9)(C), it states (29 U. S. Code 721):

> (C) records of the characteristics of each applicant will be kept specifying, as to those individuals who apply for services under this title and are determined not to be eligible therefor, the reasons for such determinations;

This part led to the formulation and passage of an additional public law, P. L. 93-516, to assure that ineligible individuals would be reevaluated annually.

> . . . in such detail as required by the Secretary in order for him to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of his responsibilities under section 13, and that the State agency will at least annually categorize and analyze such reasons and numbers and report this information to the Secretary and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 102.

Barrier-free design is mandated in present law, but has never been fully enforced. The Committee established the Architectural and Transportation Barrier Compliance Board composed of heads of departments or agencies within the Federal government, including the Departments of Health, Education and Welfare, Transportation, Housing and Urban Development, Labor, Interior, Defense, Administration, Postal Service and Veteran's Administration. The Committee felt that to justify the expenditures authorized by P. L. 93-112, it was imperative that attitudinal and physical barriers to the mobility of the handicapped be removed. To assure the Board a clear mandate, the law states in Title V. Sec. 502, (g) (29 U. S. Code 792 as amended by P. L. 93-516):*

> (g) The Board shall, at the end of each fiscal year, report its activities during the preceding fiscal year to the Congress. Such report shall include an assessment of the extent of compliance with the Acts cited in subsection (b) of this section, along with a description and analysis of investigations made and actions taken by the Board, and the reports and recommendations described in clauses (5) and (6) of subsection (b) of this section. The Board shall prepare two final reports of its activities under subsection (c) of this section. One such report shall be on its activities in the field of transportation barriers to handicapped individuals, and the other such report shall be on its activities in the field of the housing needs of handicapped individuals. The Board shall, not later than September 30, 1975, submit each such report, together with its recommendations, to the President and the Congress. The Board shall also prepare for such submission an interim report of its activities in each such field within 18 months after September 26, 1973.

This calls for an investigation and examination of alternative approaches to architectural, transportation and attitudinal barriers confronting the handicapped.

Decisions by an impartial and objective third party, a fundamental aspect of traditional due process *(Kirp, Buss and Kuriloff, 1974, P. 138) is covered by Title V, Sec. 502(e). (29 U.S. Code 792 as extended by P.L. 93-516 and P.L. 95-602).

> (e)(1) There shall be appointed by the Board an executive director and such other professional and clerical personnel as are necessary to carry out its functions under this Act. The Board is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5, United States Code, shall apply to hearing examiners appointed under this subsection.
>
> (2) The Executive Director shall exercise general supervision over all personnel employed by the Board (other than hearing examiners and their assistants). The Executive Director shall have final authority on behalf of the Board, with respect to the investigation of alleged noncompliance in the issuance of formal complaints before the Board, and shall have such other duties as the Board may prescribe.
>
> (3) For the purpose of this section, an order of compliance issued by a hearing examiner shall be deemed to be an order of the Board and shall be the final order for the purpose of judicial review.

Also included in this title is a provision to ensure any handicapped person full consideration for employment by any contractor of the Federal Government. It is detailed in Section 503(b) as follows (29 U. S. Code 793):

> (b) If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

The bill further includes a far-reaching provision mandating non-discrimination against qualified handicapped people who wish to participate in any program

*Kirp, D, Buss, W., and Kuriloff, P. Legal reform of special education: Experience studies and procedural proposals. California Law Review, 1974, 62, 138, from (A Primer on Due Process, p. 31).

receiving Federal financial assistance. (Sec. 504 and 29 U.S. Code 794 as amended by P.L. 95-602):

> Sec. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(7), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

Due to increased federal support of special program, Section 504 particularly calls attention to those handicapped individuals involved in educational pursuits,such as the handicapped in the public schools or in higher education. This section of P. L. 93-112 has had the most extensive impact on case law than have any of the other four laws being reviewed in this study.

One of the major procedural safeguards mandated by P.L. 93-112 was the individualized written rehabilitation plan. Congress was cognizant of the fact that existing programs too often did not provide for the unique needs of the individual handicapped person.

Individualized Program

After hearing extensive testimony and reviewing the data supplied to the Committee by the Department of Health, Education and Welfare, it became apparent that the individual client was not being sufficiently consulted on his own behalf in tailoring the rehabilitation program to his unique needs. This concern led to the formal written rehabilitation program requirement for every individual who is served under the vocational rehabilitation program.

It should be expressed clearly at the outset that the Committee's purpose was in no way to attempt to burden the counselors and rehabilitation coordinators with unnecessary and cumbersome paperwork. Rather, it was felt that the requirement would work to improve communication between the handicapped individuals to be served and the rehabilitation counselors who wish to see them served. A written program, with the required annual review of the program by the handicapped individual and the counselor, was intended to ensure that the rights of the individual be protected and that the counselor be cognizant of the client's progress toward a stated goal.

It was the purpose of the Committee, in requiring an individualized written rehabilitation program, to assure that each handicapped individual has an opportunity to participate in the decision-making regarding services he is or is not to receive; to have a written understanding that specifies the services to be provided and the objectives they are to achieve; to be able to obtain information on the progress he is making with regard to the objectives of the program; and to participate with the rehabilitation agency in rewriting the program when it is apparent that the stated objectives cannot be achieved. In order to ensure that such individuals are not refused services when they can be beneficial, it must be demonstrated beyond a reasonable doubt that the individual cannot achieve a vocational goal, before the individual can be determined ineligible for services because he has no vocational potential. Such a decision must be made with the full consent of the individual and full documentation on this decision must be included in the written program developed for him.

Inherent in the purpose of the legislation were changes designed to provide flexibility in the basic vocational rehabilitation program to ensure full services. The committee placed special emphasis on providing services which would be responsive to individual needs. Hence, the final form of the law was detailed and specific as noted in Title I, Part A, Sec. 102 (29 U. S. Code 722 as amended

by P.L. 93-516 and P.L. 95-602):

(a) The Secretary shall insure that the individualized written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis, required by section 721(a)(9) of this title in the case of each handicapped individual is developed jointly by the vocational rehabilitation counselor or coordinator and the handicapped individual (or, in appropriate cases, his parents or guardians), and that such program meets the requirements set forth in subsection (b) of this section. Such written program shall set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual, and, as appropriate, such specification of reasons for such an ineligibility determination shall set forth the rights and remedies, including recourse to the process set forth in subsection (b)(5) of this section, available to the individual in question.

(b) Each individualized written rehabilitation program shall be reviewed on an annual basis at which time each such individual (or, in appropriate cases, his parents or guardians) will be afforded an opportunity to review such program and jointly redevelop and agree to its terms. Such program shall include, but not be limited to (1) a statement of long-range rehabilitation goals for the individual and intermediate rehabilitation objectives related to the attainment of such goals, (2) a statement of the specific vocational rehabilitation services to be provided, (3) the projected date for the initiation and the anticipated duration of each such service, (4) objective criteria and evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and, (5) where appropriate, a detailed explanation of the availability of a client assistance project established in such area pursuant to section 732 of this title.

(c) The Secretary shall also insure that (1) in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual, emphasis is placed upon the determination and achievement of a vocational goal for such individual, (2) a decision that such an individual is not capable of achieving such a goal and thus not eligible for vocational rehabilitation services provided with assistance under this part, is made only in full consultation with such individual (or, in appropriate cases, his parents or guardians), and only upon the certification, as an amendment to such written program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate, has demonstrated beyond any reasonable doubt that such

individual is not then capable of achieving such a goal, and (3) any such decision, as an amendment to such written program, shall be reviewed at least annually in accordance with the procedure and criteria established in this section.

(d)(1) The Director of any designated State unit shall establish procedures for the review of determinations made by the rehabilitation counselor or coordinator under this section, upon the request of a handicapped individual (or, in appropriate cases, his parents or guardians). Such procedures shall include a requirement that the final decision concerning the review of any such determination be made in writing by the Director. The Director may not delegate his responsibility to make any such final decision to any other officer or employee of the designated State unit.

(2) Any handicapped individual (or, in appropriate cases, his parent or guardian) who is not satisfied with the final decision made under paragraph (1) by the Director of the designated State unit may request the Secretary to review such decision. Upon such request the Secretary shall conduct such a review and shall make recommendations to the Director as to the appropriate disposition of the matter. The Secretary may not delegate his responsibilities under this paragraph to any officer of the Department of Health, Education, and Welfare who is employed at a position below that of an Assistant Secretary.

The history of this Act is marked by two Presidential vetoes, one on October 27, 1972, and another on March 27, 1973. The Committee, believing that further delay would jeopardize many of the important changes made by this legislation, agreed to revisions and were assured of approval by the executive branch. President Nixon signed this third attempt into law on September 26, 1973.

It is interesting to note that after President Nixon resigned on August 8, 1974, President Ford vetoed P. L. 93-516 on October 29, 1974. That veto was overridden by Congress and became law on December 9, 1974, which re-established several of the major concessions made by Congress to assure the passage of P.L. 93-112. These provisions have been extended further in P.L. 95-602 which was passed by Congress on October 15, 1978, and approved by President Carter on November 6, 1978.

EDUCATION AMENDMENTS OF 1974, P.L. 93-380

The Education Amendments of 1974, P. L. 93-380, cover a wide range of topics from pre-school comprehensive educational services for children 0 to 8 years of age, to Adult Education Community School programming. Rights of privacy for students, and regulations to protect these rights, were included in the Senate version of the bill and selected for inclusion in the final bill.

The National Reading Improvement Program and the Compensatory Education Program are legislated in this act and are included here to show that there are other provisions for mildly handicapped children that do not specifically focus on the handicapped in the public laws being reviewed. These programs were further extended by P. L. 95-561, the Education Amendments of 1978. Amendments which were specifically related to the education of handicapped children were subsequently restated in P. L. 94-142 and will be presented under that section of this chapter. These amendments extended special education services to all handicapped children regardless of the severity of the handicap, and provided guidelines to assure that procedural safeguards be implemented for the protection of all handicapped children and their families.

Eligibility Criteria

The National Reading Improvement Act provided for eligibility based on needs as stated in Title VII, Part A, Sec. 705(b); was extended by P. L. 94-194, the National Reading Improvement Program Act; and was restated in P. L. 95-561, the Education Amendments of 1978. P. L. 95-561 includes reading improvement provisions under TITLE II-BASIC SKILLS IMPROVEMENT. Grants made through the State educational agencies shall (Sec. 222(a)(4) and 20 U. S. Code 2902)

> "(B) assure that such distribution shall include grants to local educational agencies having high concentrations of children with low reading or mathematics proficiency;

This program was designed to include all students (Sec. 201 and 20 U.S. Code 2881).

> "SEC. 201. The purpose of this part is—
> "(1) to assist Federal, State, and local educational agencies to coordinate the utilization of all available resources for elementary and secondary education to improve instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

Financial assistance is provided to strengthen basic skills instruction, enhance the necessary skills of the instructional staff, develop means for parent participation, provide for community involvement and public media participation, and develop materials.

Eligibility is further extended to all students who fail to pass educational proficiency examinations as stated in P.L. 95-561, Sec. 921(b)(2) and 20 U.S. Code 3331:

> "(2) The educational proficiency plan referred to in paragraph (1) of this subsection—
> "(A) shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the State may require such standards;
> "(B) shall contain a description of the programs designed to assist students in achieving levels of educational proficiency compatible with the standards described in subparagraph (A) of this paragraph;
> "(C) may provide for the administration of examinations to students, at specified intervals or grade levels, to measure their reading, writing, or mathematical proficiency, or their proficiency in other subjects which the applicant considers appropriate for testing; and
> "(D) shall contain the assurances of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination.

Services Provided

Services to be provided are generally stated throughout the act and are summarized in the Statement of Findings and Policy in P. L. 95-561 (20 U.S. Code 3282):

> "SEC. 802. (a) The Congress finds that—
> "(1) the school is an integral part of the local human service delivery system;
> "(2) the school is a primary institution for the delivery of services and may be the best instrument for the coordination of frequently fragmented services, including benefits obtained by energy savings and parental involvement in the delivery of such services;

> "(3) community education promotes a more efficient use of public education facilities through an extension of school buildings and equipment;
> "(4) as the primary educational institution of the community, the school is most effective when it involves the people of that community in a program to fulfill the educational needs of individuals of the community; and
> "(5) community schools provide a great potential for the use of needs assessment as a basis for human resources policies.
> "(b) It is the purpose of this title—
> "(1) to provide in collaboration with other public and nonprofit agencies educational, recreational, cultural, and other related community and human services, in accordance with the needs, interests, and concerns of the community through the expansion of community education programs;
> "(2) to coordinate the delivery of social services to meet the needs and preferences of the residents of the community served by the school;
> "(3) to provide for an efficient, energy-conserving use of school facilities; and
> "(4) to provide for a research and development emphasis in community education which can contribute to an improved formulation of Federal, State, and local policy.

These services were further delineated in Title VI, Part A, Sec. 601 of P.L. 93-380 and restated in Sec. 803 of P. L. 95-561 (20 U.S. Code 3282):

> "SEC. 803. For the purpose of this title, a 'community education program' means a program in which a public building, including but not limited to, a public elementary or secondary school, or a community or junior college (or a related extension center), is used as a community center operated by a local educational agency in conjunction with other groups in the community, community organizations, and local governmental agencies, to provide educational, recreational, health care, cultural, and other related community and human services for the community that the center serves in accordance with the needs, interests, and concerns of that community.

This program extends the services to meet the needs of the adults in the community. This extension is also stated in Sec. 302 amendments of P. L. 95-561 (20 U. S. Code 1201) under the Adult Education Act:

> "SEC. 302. It is the purpose of this title to expand educational opportunities for adults and to encourage the establishment of programs of adult education that will—
> "(1) enable all adults to acquire basic skills necessary to function in society,
> "(2) enable adults who so desire to continue their education to at least the level of completion of secondary school, and
> "(3) to make available to adults the means to secure training that will enable them to become more employable, productive, and responsible citizens.".

Services to be provided under the Basic Skills Improvement Program included

special components to train parents to teach their children. Sec. 222(e) and 20 U.S. Code 2902 states:

> "(e) In addition to the grants authorized in subsection (d), the State educational agency may also make grants to support activities designed to enlist the assistance of parents working with schools to improve the skills of their children in reading, mathematics, and oral and written communication. Activities that may be supported under this section include—
>
> "(1) the development and dissemination of materials that parents may use in the home to improve their children's performance in those skills;
>
> "(2) the encouragement of closer contacts between parents and teachers to improve the coordination between learning experiences in the home and those in school;
>
> "(3) planning for, developing and improving centers accessible to parents to provide materials and professional guidance, including volunteers, for parents who desire to assist in the instruction of their children; and
>
> "(4) the demonstration of training programs for parents who desire to develop new skills to complement the instruction their children receive in school.

Procedural Safeguards

The Legislative History of Title V, Sec. 513 of P.L. 93-380, which may be cited as the Family Educational Rights and Privacy Act of 1974, notes that the House bill intended that "the moral or legal rights of parents should not be usurped." The Senate amendment called for parents to have the right to inspect and contest their child's school records. According to this amendment, records could not be released without parental consent, and institutions must have written policies for releasing records. The power of this act lies within the sanctions included in the law which call for the denial of funds to institutions not in compliance. (Title V. Sec. 513 and 20 U. S. Code 1232g as amended by P. L. 93-568):

> (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such stu-

dent or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations--

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materals which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel and ancillary thereto which are in the sole posssession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in

officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency on institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interest;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not

permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless--

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those

specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution or postsecondary education the permission or consent required of the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section

and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Basically the Act, in its final form, makes records totally available to parents and students, and limits or restricts access to those records without written permission. In addition, the Act provides for parents or students to challenge information in the records, to seek changes, and to add their comments.

The protection of student rights extends beyond provisions in use of educational records as stated in Sec. 514 (20 U.S. Code 1232h as amended by P.L. 95-561):

> Sec. 439(a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.
>
> (b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:
>
> (1) political affiliations;
>
> (2) mental and psychological problems potentially embarrassing to the student or his family;
>
> (3) sex behavior and attitudes;
>
> (4) illegal, anti-social, self-incriminating and demeaning behavior;
>
> (5) critical appraisals of other individuals with whom respondents have close family relationships;
>
> (6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
>
> (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

Whether the child is classified as handicapped or not does not preclude protection of his rights.

Individualized Program

The concept of an individualized written educational program was introduced in the amendments to Title I, Sec. 101 (a)(4) with the encouragement of Congress to develop an individualized program for each educationally deprived child. This section was repealed and restated in Sec. 129 of P. L. 95-561 (20 U.S. Code 2739):

> "SEC. 129. It is the intent of the Congress to encourage, whenever feasible, the development for each educationally deprived child participating in a program under this title of an individualized educational plan (maintained and periodically evaluated), agreed upon jointly by the local educational agency, the teacher, a parent or guardian of the child, and, when appropriate, the child.

Although not specifically identified as an individually written educational program, the same concept was reflected in the description of the National Reading Improvement Programs and is restated in the Basic Skills Improvement Program of P. L. 95-561 (Sec. 222 (d)(6) and 20 U.S. Code 2902):

> "(6) assessment, evaluation, and collection of information on individual children by teachers during each year of a pre-elementary program, to be made available for teachers in the subsequent year, in order that continuity for the individual child not be lost. Such information shall also be available to parents or guardians of the individual children.

The only mandate for individualized written educational plans for children included in this law is limited to those children participating in one of 20 experimental programs conducted by the National Institute of Education for the purpose of determining the effectiveness of compensatory educational programs for educationally deprived students (Title VIII. Part B, Sec. 821(a) and 20 U. S. Code 1221e).

> (3) an analysis of the effectiveness of methods and procedures for meeting the educational needs of children, including the use of individualized written educational plans for children, and programs for training the teachers of children;

These references to individualized written plans for students with special needs were antecedents to the individualized educational programs mandated by Congress in P. L. 94-142 for every handicapped child.

The Legal Rights to a free appropriate public education for handicapped individuals as presented in P. L. 93-380, and P. L. 95-561 extend beyond labels (as in the Basic Skills Improvement Programs) and beyond age boundaries (as in Community Education Programs). Where "special education" programs are not available or where eligibility for such is restrictive, alternative services should be utilized.

SPECIAL HEALTH REVENUE SHARING ACT OF 1975, P. L. 94-63.

The laws from the 94th Congress built on the provisions of the 93rd and earlier congressional sessions. The major reason for reviewing and including P. L. 94-63, Special Health Revenue Sharing Act of 1975, is its focus on consultation and educational services for a wide range of individuals and agencies involved with provision of mental health services including health professionals, schools, law enforcement and correctional agencies, public welfare agencies, health services delivery agencies, educational institutions, and other appropriate agencies.

Eligibility Criteria

Eligibility for services through in-patient mental health facilities is askew of eligibility for educational services, but under the precepts of applicable laws beneficiaries for either service are provided initial screening for referral. (Title III. Sec. 303 and 42 U. S. Code 2689):

> "(E) assistance to courts and other public agencies in screening residents of the center's catchment area who are being considered for referral to a State mental health facility for inpatient treatment to determine if they should be so referred and provision, where appropriate, of treatment for such persons through the center as an alternative to inpatient treatment at such a facility;

From the standpoint of admission to mental hospitals or to residential educational facilities, the Legislative History reflects the assumption that more effective screening procedures tend to prevent inappropriate admissions. This "assistance to courts and other public agencies in screening" individuals being considered for admission to state mental hospitals is one of six areas of responsibility for Community Mental Health Centers established by the Congressional Committee drafting the bill. This provision is restated in P. L. 95-602 under services to be provided.

Services Provided

The law clearly specifies the mission of Community Mental Health Centers to serve all in need within the catchment area. The lack of resources for services has historically affected services to children and the aged. These high-risk populations, according to the Legislative History, have special problems, and the need for specially trained professionals is paramount. All of these concepts found their way into the final copy of the bill. Sec. 201(b)(1) and 42 U.S. Code 2689 as extended and restated by P. L. 95-602):

> "(b)(1) The comprehensive mental health services which shall be provided through a community mental health center are as follows:
>
> "(A) Beginning on the date the community mental health center is established for purposes of this title, the services provided through the center shall include—
>
> "(i) inpatient services, emergency services, and outpatient services;
>
> "(ii) assistance to courts and other public agencies in screening residents of the center's catchment area who are being considered for referral to a State mental health facility for inpatient treatment to determine if they should be so referred and provision, where appropriate, of treatment for such persons through the center as an alternative to inpatient treatment at such a facility;
>
> "(iii) provision of followup care for residents of its catchment area who have been discharged from inpatient treatment at a mental health facility;
>
> "(iv) consultation and education services which—
>
> "(I) are for a wide range of individuals and entities involved with mental health services, including health professionals, schools, courts, State and local law enforcement and correctional agencies, members of the clergy, public welfare agencies, health services delivery agencies, and other appropriate entities; and

"(II) include a wide range of activities (other than the provision of direct clinical services) designed to develop effective mental health programs in the center's catchment area, promote the coordination of the provision of mental health services among various entities serving the center's catchment area, increase the awareness of the residents of the center's catchment area of the nature of mental health problems and the types of mental health services available, and promote the prevention and control of rape and the proper treatment of the victims of rape; and

"(v) the services described in subparagraph (B) or, in lieu of such services, providing a plan approved by the Secretary under which the center will, during the three-year period beginning on such establishment date, assume in increments the provision of the services described in subparagraph (B) and will upon the expiration of such three-year period provide all the services described in subparagraph (B).

"(B) After the expiration of such three-year period, a community mental health center shall provide, in addition to the services required by subparagraph (A), services which include—

"(i) day care and other partial hospitalization services;

"(ii) a program of specialized services for the mental health of children, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

"(iii) a program of specialized services for the mental health of the elderly, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

"(iv) a program of transitional half-way house services for mentally ill individuals who are residents of its catchment area and who have been discharged from inpatient treatment in a mental health facility or would without such services require inpatient treatment in such a facility; and

"(v) provision of each of the following service programs (other than a service program for which there is not sufficient need (as determined by the Secretary) in the center's catchment area, or the need for which in the center's catchment area the Secretary determines is currently being met):

"(I) A program for the prevention and treatment of alcoholism and alcohol abuse and for the rehabilitation of alcohol abusers and alcoholics.

"(II) A program for the prevention and treatment of drug addiction and abuse and for the rehabilitation of drug addicts, drug abusers, and other persons with drug dependency problems.".

Title III mandates refer to Community Mental Health Centers and Title IV mandates affect Migrant Health Centers. Provision of services is mandated for both center classifications as is seen in Title IV. Sec. 401 amendments for Sec. 319 (42 U. S. Code 247d as amended by P. L. 95-626):

(6) The term "primary health services" means-

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);
(D) emergency medical services;
(E) transportation services as required for adequate patient care;
(F) preventive dental services; and
(G) pharmaceutical services, as may be appropriate for particular centers.

Increasing numbers of mentally impaired adults who have been "administratively discharged" from state hospitals and residential programs are residing in community settings with inadequate services available to maintain them there. The scarcity of comprehensive community-based resources inhibits the potential of family and community as therapeutic agents, thus limiting the alternatives for these individuals. In this bill we find specific provisions to augment and improve community resources, in order to enhance the capability of mentally impaired people to maintain themselves in the community. (Title I. Sec. 102(d)(2)(D) and 42 U. S. Code 246):

"(iii) provide for assistance to courts and other public agencies and to appropriate private agencies to facilitate (I) screening by community mental health centers (or, if there are no such centers, other appropriate entities) of residents of the State who are being considered for inpatient care in a mental health facility to determine if such care is necessary, and (II) provision of followup care by community mental health centers (or if there are no such centers, by other appropriate entities) for residents of the State who have been discharged from mental health facilities.

(Title III. Sec. 303 Amendments for Sec. 201(b)(1) and 42 U. S. Code 2689):

"(F) provision of followup care for residents of its catchment area who have been discharged from a mental health facility;
"(G) a program of transitional half-way house services for mentally ill individuals who are residents of its catchment area and who have been discharged from a mental health facility or would without such services require inpatient care in such a facility;

Procedural Safeguards

Confidentiality and assurances against inappropriate placement are two

procedural safeguards included in this law. (Title III. Sec. 303 Amendments for Sec. 201 and 42 U. S. Code 2689):

> "(d) A center shall have established, in accordance with regulations prescribed by the Secretary, (1) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, (2) an integrated medical records system (including a drug use profile) which, in accordance with applicable Federal and State laws respecting confidentiality, is designed to provide access to all past and current information regarding the health status of each patient and to maintain safeguards to preserve confidentiality and to protect the rights of the patient, (3) a professional advisory board, which is composed of members of the center's professional staff, to advise the governing board in establishing policies governing medical and other services provided by such staff on behalf of the center,

(Title I. Sec. 102(d)(2)(D)(i) and 42 U. S. Code 246)

> "(I) is designed to eliminate inappropriate placement in institutions of persons with mental health problems, to insure the availability of appropriate noninstitutional services for such persons, and to improve the quality of care for those with mental health problems for whom institutional care is appropriate;

The Committee reported that over one million people were living in State mental hospitals and nursing homes. Studies had indicated that for one-fourth to one-third of persons receiving institutional care, this placement was inappropriate.

Living in the community with supportive services would facilitate increased capability of this group and avoid unnecessary institutionalization. The scarcity of comprehensive community-based resources limits the family and community as helping agents and therefore reduces the alternatives to residential care.

Individualized Program

P. L. 94-63 mandates individualized written programs only for persons participating in hemophilia treatment centers.

Interestingly, this was another bill plagued by Presidential veto. At least two reasons were given for the vetoes: economy and equity. President Ford said he felt funding was provided through Medicare and Medicaid for the

mental health problems of the aged. In reality, Community Mental Health Centers in their clinic services definition do not have access to Medicaid funds, and only physicians can be reimbursed through Medicare. On the basis of its analysis of the Community Mental Health Centers' funding situation, as compared to the administration's allegations, the legislative committee concluded that funding sources must be provided to continue and expand the services of Community Mental Health Centers. As stated by the Committee, the alternative for most people served by the Centers would be residence in State mental hospitals.

Although primary interest has been on the specific mandates for Community Mental Health Centers, it is important to remember that many of these services are also mandated in P. L. 94-63 for Community Health Centers and Migrant Health Centers. These services have been further expanded by P. L. 95-622 (Community Mental Health Centers Extension Act of 1978) and P. L. 95-626 (Health Services and Centers Amendments of 1978). Handicapped individuals have access to services as provided to the general non-handicapped public when special programs are not available.

DEVELOPMENTALLY DISABLED ASSISTANCE AND BILL OF RIGHTS ACT, P. L. 94-103

P. L. 94-103, the Developmentally Disabled Assistance and Bill of Rights Act, is unique among the five laws in that it anticipates disability and makes provisions for accommodating the family and the disabled. The focus is on habilitation of the developmentally disabled with particular emphasis upon the protection of their rights. The Developmentally Disabled Assistance and Bill of Rights Act requires that the State plan be a specific, goal-oriented plan including provisions designed to accomplish seven listed goals: deinstitutionalization; improvement of the quality of institutional care; screening, diagnosis and evaluation of developmentally disabled infants and children; services for developmentally disabled adults; establishment of community alternatives to

institutionalization; protection of the human rights of the developmentally disabled; and interdisciplinary intervention and training programs for multi-handicapped individuals.

Since 1935 the needs of the developmentally disabled have been covered with an assortment of social security and rehabilitation programs. The concern was emphasized in 1963 with P. L. 88-164 (Mental Retardation Facilities and Community Mental Health Centers Construction Act). This Act provided for research on mental retardation, construction of facilities for the mentally retarded, and training of teachers for the mentally retarded and other handicapped children.

Eligibility Criteria

The 1970 Developmentally Disabled Act used a flexible and functional definition designed to include in the program individuals afflicted with any neurological condition having its onset before age 18 and likely to be permanent and severely disabling. It was the intent of Congress for this definition to specify those conditions for which services should and should not be provided. This was never done. With P.L. 94-103 the definition became even more specifically inclusive. However, to prevent exclusion of handicapped individuals from eligibility for services, Congress expanded the definition in P.L. 95-602 (Sec. 102 (7) and 42 U.S. Code 6001):

> "(7) The term 'developmental disabilty' means a severe, chronic disability of a person which--
>
> "(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
>
> "(B) is manifested before the person attains age twenty-two;
>
> "(C) is likely to continue indefinitely;
>
> "(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
>
> "(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.".

Rather than being concerned with causative factors, this definition calls for

highly practical and direct services to the developmentally disabled based on need. (Title I. Part C, Sec. 111(a) and 42 U.S. Code 6063).

> "(21) provide for the early screening, diagnosis, and evaluation (including maternal care, developmental screening, home care, infant and preschool stimulation programs, and parent counseling and training) of developmentally disabled infants and preschool children, particularly those with multiple handicaps;

This is further expanded and clarified in P.L. 95-602 (42 U.S. Code 6000):

> "(b)(1) It is the overall purpose of this title to assist States to assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through a system which coordinates, monitors, plans, and evaluates those services and which ensures the protection of the legal and human rights of persons with developmental disabilities.
> "(2) The specific purposes of this title are—
> "(A) to assist in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs cannot be covered or otherwise met under the Education for All Handicapped Children Act, the Rehabilitation Act of 1973, or other health, education, or welfare programs;
> "(B) to assist States in appropriate planning activities;
> "(C) to make grants to States and public and private, nonprofit agencies to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel with respect to providing services to persons with developmental disabilities;
> "(D) to make grants to university affiliated facilities to assist them in administering and operating demonstration facilities for the provision of services to persons with developmental disabilities, and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and
> "(E) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities.".

Services Provided

The services provided are in direct response to the determined eligibility. These services extend beyond the disabled individual to provide for the social, psychological and financial needs of the family. (Title I. Part E, Sec. 102 and 42 U.S. Code 6001 as amended by P.L. 95-602):

> (8)(A) The term "services for persons with developmental disabilities" means priority services (as defined in subparagraph (B), and any other specialized services or special adaptations of generic services for persons with developmental disabilities, including in these services the diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal

services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

(B) The term "priority services" means case management services (as defined in subparagraph (C)), child development services (as defined in subparagraph (D)), alternative community living arrangement services (as defined in subparagraph (E)), and nonvocational social-developmental services (as defined in subparagraph (F)).

(C) The term "case management services" means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services; and such term includes--

(i) follow-along services which ensure, through a continuing relationship, lifelong if necessary, between an agency or provider and a person with a developmental disability and the person's immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the persons' progress.

(D) The term "child development services" means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, and includes (i) early intervention services, (ii) counseling and training of parents, (iii) early identification of developmental disabilities, and (iv) diagnosis and evaluation of such developmental disabilities.

(E) The term "alternative community living arrangement services" means such services as will assist persons with developmental disabilities in maintaining suitable residential arrangements in the community, and includes in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, and staff training, placement, and maintenance services.

(F) The term "nonvocational social-developmental services" means such services as will assist persons with developmental disabilities in performing daily living and work activities.

The services provided are aimed at protecting the rights of the developmentally disabled. (Title II, Sec. 201 Amendments to Part A, Sec. 111 and 42 U.S. Code 6010 as clarified by P.L. 95-602):

The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

(1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

Procedural Safeguards

For the first time, and only in this public law, advocacy rights are extended to include developmentally disabled individuals. (Title II. Sec. 203 amendments to Part A, Sec. 113 and 42 U.S. Code 6012 as amended by P.L. 95-602):

> Sec. 113.(a) In order for a State to receive an allotment under part C, (1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities, (2) such system must (A) have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State, (B) not be administered by the State Planning Council, and (C) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities. The Secretary may not make an allotment under part C to a State for a fiscal year beginning after September 30, 1977, unless the State has in effect a system described in the preceding sentence.

For the vast majority of individuals institutional care is inappropriate and inhumane. This law calls for the protection of the individual by the State from unnecessary admission to an inpatient facility. (Title I. Part C, Sec. 111 (a)(9) and 42 U. S. Code 6063):

> "(20) contain a plan designed (A) to eliminate inappropriate placement in institutions of persons with developmental disabilities, and (B) to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate;
>
> "(21) contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this title will be protected;

Further, it specifies a program of services that includes (Title II. Sec. 201 amendments to Part A, Sec. 111 and 42 U. S. Code 6010):

> "(2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

Community programs must be developed to support and assist the development

of the disabled in settings which are least restrictive.

Summarily, this law notes (Title I, Part C, Sec. 111(a)(9) and 42 U. S. Code 6063):

> "(22) provide for counseling, program coordination, follow-along services, protective services, and personal advocacy on behalf of developmentally disabled adults;
> "(23) support the establishment of community programs as alternatives to institutionalization and support such programs which are designed to provide services for the care and habilitation of persons with developmental disabilities, and which utilize, to the maximum extent feasible, the resources and personnel in related community programs to assure full coordination with such programs and to assure the provision of appropriate supplemental health, educational, or social services for persons with developmental disabilities;

As noted in all previous laws, confidentiality is fundamental to the rights of all individuals. (Title I, Part E, Sec. 128 and 42 U. S. Code 6009):

> "(3) provide effective measures to protect the confidentiality of records of, and information describing, persons with developmental disabilities.

Individualized Program

A conference substitute of the earlier Senate and House versions of this law called for individual habilitation plans for those served. The final version of the law spells it out as follows, in Title I and again in Title II of P. L. 94-103. (Title I. Part E, Sec. 128 and 42 U. S. Code 6009):

> "(1) provide objective measures of the developmental progress of persons with developmental disabilities using data obtained from individualized habilitation plans as required under section 112 or other comparable individual data:

(Title II. Sec. 202(b) and 42 U. S. Code 6011):

> "(b) A habilitation plan for a person with developmental disabilities shall meet the following requirements:
> "(1) The plan shall be in writing.
> "(2) The plan shall be developed jointly by (A) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (B) such person, and (c) where appropriate, such person's parents or guardian or other representative.
> "(3) Such plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such objectives shall be stated specifically and in sequence and shall be

expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a program coordinator who will be responsible for the implementation of the plan.

"(4) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

"(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

"(c) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision."

The provisions of this law which are unique when compared to the other five laws are the requirement for socio-legal advocacy services to handicapped individuals and the comprehensiveness of services to be provided as restated in P. L. 95-602 so that all available resources are utilized (42 U.S. Code 6062):

"(2) The plan must--

"(A) set out the specific objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

"(B) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for Federally assisted State programs as the State conducts relating to education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health, and under such other plans as the Secretary may specify, and (ii) how funds allotted to the State in accordance with section 132 will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities which are eligible for Federal assistance under such other State programs;

"(C) for each fiscal year, assess and describe the extent and scope of the priority services (as defined in section 102(8)(B)) being or to be provided under the plan in the fiscal year; and

"(D) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975, P. L. 94-142

The Education for All Handicapped Children Act of 1975 (P. L. 94-142) serves as the funding source for those basic provisions spelled out in P. L. 93-380. There are process additions and refinements in P. L. 94-142 that come from an exhaustive field review which was unusual in the history of educational laws.

Amendments enacted in P. L. 93-380 establish basic due process procedures and legal protections, a priority to service for handicapped children who are not receiving an education, a prohibition on discrimination in testing, and provision of educational services in the least restrictive environment appropriate to the needs of the handicapped child. Further, States are required to establish policies and procedures to ensure that all handicapped children are identified, located, and evaluated. In addition, they are to provide full educational services, a timetable for these services, and a description of the facilities, personnel and services needed.

Eligibility Criteria

To assure the delivery of these services, P. L. 94-142 mandates that in order to be eligible for funding each State must have a right-to-education policy that covers all handicapped children ages three to eighteen. The State must establish priorities for services, first to handicapped children not receiving an education and second to handicapped children with the most severe handicaps receiving an inadequate education. (Sec. 5 amendments to Sec. 614(a)(1) and 20 U. S. Code 1414):

> "(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

The definition in the category of Other Health Impaired as reported in the Legislative History of P. L. 93-380 included Learning Disabilities. Now this definition is a part of the statutes of P. L. 94-142. (Sec. 5 amendments to Sec. 620 and 20 U. S. Code 1401 and 1411):

> (A) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or environmental, cultural, or economic disadvantage.

Services Provided

Prior to 1966 the Federal Government had done little to assist in providing educational services for handicapped children. In recent years decisions in more than 36 court cases have recognized the rights of the handicapped to an appropriate education. P. L. 93-380 incorporated the major principles of the right to education cases; however, Congress felt compelled to take a more active role through equal protection of the laws guaranteeing that handicapped children are provided equal educational opportunity. Although the States had made an effort to comply with the court decisions and legislation, lack of financial resources had prevented implementation of comprehensive services. P. L. 94-142 provides a funding source and specific guidelines for the provision of services to handicapped children. (Sec. 3 and 20 U. S. Code 1401):

> "(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.".

(Sec. 4 and 20 U. S. Code 1401)

> "(18) The term 'free appropriate public education' means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5).

Lest the above be interpreted as services for public school children only, the following expands the provisions. (Sec. 5 amendments to Sec. 613(a) and 20 U. S. Code 1413):

> "(4) set forth policies and procedures to assure--
>
> "(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and
>
> "(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

Instructional services are present in this law and related services are comprehensive. (Sec. 4 and 20 U. S. Code 1401):

> "(16) The term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.
>
> "(17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

Comprehensive services provided are to be continually assessed regarding quality and effectiveness. (See Sec. 3 and 20 U. S.Code 1401 above).

Procedural Safeguards

The hegemony of procedural safeguards extends the protections afforded handicapped children and their families to include decision making concerning programs developed in their behalf. (Sec. 5 amendments to Sec. 614(a)(1)(C) and 20 U. S. Code 1414):

> "(iii) the participation and consultation of the parents or guardian of such children; and
> "(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

Parents of handicapped children are frequently not able to advocate the rights of their children because they have been erroneously led to believe that their children will not be able to lead adequate lives. Parents are beginning to recognize that their children are being denied services which have constitutional guarantees. To assure provision of these guaranteed services without court intervention, Congress included specific guidelines for providing procedural safeguards. (Sec. 5 amendments to Sec. 615 and 20 U. S. Code 1415)

> "SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.
> "(b)(1) The procedures required by this section shall include, but shall not be limited to--
> "(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;
> "(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;
> "(C) written prior notice to the parents or guardian of the child whenever such agency or unit--
> "(i) proposes to initiate or change, or
> "(ii) refuses to initiate or change,
> the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

P. L. 94-142 takes positive necessary steps to ensure that the rights of children and their families are protected. (Sec. 5 amendments to Sec. 617 and 20 U. S. Code 1417):

> "(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Commissioner and by State and local educational agencies pursuant to the provisions of this part.

Individualized Program

The law provides for an individualized planning conference to be held at least annually. It is necessary to involve the parents or guardian, an individual representing the local educational agency qualified to provide special education, the child's teacher, and the child when appropriate. They will meet jointly to develop and review a written statement describing the educational services to be provided and to revise the statement only with the agreement of the parents. (Sec. 4 and 20 U. S. Code 1401):

> "(19) The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

This individualized education program must be developed at least once a year and more often if necessary. (Sec. 5 amendments to Sec. 614 and 20 U. S. Code 1414):

> "(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

The locus of control for this process and the law itself lies with the State Education Agency. In the Legislative History Congress attempted to control the dissemination of the individualized program out of concern for confidentiality or the sheer process of maintaining records. The Committee recommended that copies be provided to parents or others involved. They specified that such records were not intended to be forwarded to the State agency. The Committee did state that such records would be available for purposes of audit and evaluation. (See Sec. 4(a)(18) and 20 U. S. Code 1401).

This chapter has presented an in-depth analysis of the Legal Rights of handicapped individuals as mandated in five major public laws enacted by the 93rd and 94th Congresses and expanded by the 95th Congress. Each of the laws was analyzed according to mandates related to Eligibility Criteria, Services Provided, Procedural Safeguards, and the Individualized Program. The last chapter of this study will summarize the results of this analysis with observations concerning the laws and state conclusions and recommendations for further study and legislation.

CHAPTER 4

SUMMARY AND CONCLUSIONS

Providing a responsible and effective platform of advocacy for handicapped persons, their families, and concerned professionals was the primary mission of this study. The challenge of the work was one of translating a complex and confusing network of legal provisions into an accessible format to professionals and lay people concerned with matching human needs with appropriate resources. Full realization of the magnitude of this effort ultimately will rest upon effective use of the findings to enhance quality of life for handicapped persons.

The constitutional rights of all individuals in this country and of the handicapped in particular have been clarified and set forth over the years in many court cases and legislative enactments. Through these processes of clarification, legal guidelines have now been established to extend the protection of human rights to many groups. For example, current legislation has specified the rights not only of individuals actually handicapped, but also of those who have been or are thought to be handicapped (Sec.7(7) and Sec. 504 and 29 U.S. Code 706 and 794).

Five major programs of national legislation mandating services to handicapped individuals were examined in Chapter 3. The basic legal and human rights of the handicapped, as mandated in these laws, provided the guiding concepts for discussion. Each law was analyzed according to provisions specifying eligibility criteria for services, the nature of services provided, the associated procedural due process safeguards, and the role of individualized written service plans. Whereever amendments have been made, the laws were analyzed according to the most recent amendments.

The importance of providing services that enable the handicapped to live in settings least restrictive of their personal freedom has been emphasized in all the laws discussed. Protection of procedural due process safeguards by involving the handicapped person, his family and his representatives in the individualized service planning process is also a central issue in these laws. Another fundamental safeguard addressed by the laws is protection of the privacy rights of the handicapped individual through stringent regulations on confidentiality of records.

Eligibility Criteria

Typically, eligibility criteria set by law restrict access to services available to handicapped individuals. Eligibility may be determined by the definition of an individual's handicapping condition, or by other criteria derived from set procedures of determining individual needs. The following table illustrates the eligibility criteria established by each of the five laws presented.

Table 3:
ELIGIBILITY CRITERIA

Public Law 93-112
1. Any individual who has a physical or mental disability which
   (a) constitutes a handicap to employment
   (b) limits one or more major life activity
2. Any individual who has a record of or is regarded as having an impairment.

Public Law 93-380
1. Children with low reading or mathematics proficiency.
2. Students who fail educational proficiency examinations.
3. Adults in need of skills and training to increase their level of participation in society.

Public Law 94-63
1. Individuals referred for institutional treatment.
2. Residents of institutions whose placement is inappropriate.
3. Children in need of mental health services.
4. All individuals in need of health or mental health services.

Public Law 94-103
1. Individuals with mental and/or physical impairments manifest before 22 years of age and expected to be of indefinite duration.
2. Pregnant women.

Public Law 94-142
All handicapped children from 3-21 years of age.

Services Provided

Services available to the handicapped and their families are comprehensive when considered across all the laws. Examining relationships among available services and eligibility criteria for the different laws can reveal both service gaps and overlapping provisions for services. The services to be provided according to each law are represented graphically in Table 4.

Table 4:

SERVICES PROVIDED	93-112	93-380	94-63	94-103	94-142
Diagnostic Evaluation	x	x	x	x	x
Medical and Psychological	x		x	x	x
Counseling	x		x	x	x
Guidance and Placement	x		x	x	
Follow-up and Follow-along	x	x	x	x	
Family Counseling			x	x	
Education and Training	x	x	x	x	x
Vocational Training	x	x		x	x
Education	x	x	x	x	x
Personal Care			x	x	x
Recreation		x	x	x	x
Transportation	x	x	x	x	x
Living Arrangements		x	x	x	
Day Care			x	x	
Domiciliary Care				x	
Special Living Arrangements			x	x	
Institutional Care		x	x	x	x
De-Institutionalization			x	x	x
Advocacy	x			x	x
Self or Parent Involvement in Programming	x	x		x	x
Sheltered Employment	x			x	
Coordination With Other Agencies	x	x	x	x	
Aids and Devices (Telecommunications)	x				x
Corrective Surgery	x		x		
Therapeutic Treatment	x		x	x	x
Hospitalization Costs for Treatment	x		x		
Maintenance During Treatment	x				
Recruitment	x	x		x	x
Licenses, Tools, Initial Supplies	x				
Individualized Written Programs	x	x	x	x	x

Procedural Safeguards

Out of concern for the dignity and inherent worth of all handicapped individuals, Congress placed specific restrictions on the implementation of service programs to guard against arbitrariness, discrimination, and other potential abuses of authority. Mandated safeguards related to the protection of basic human dignity of the handicapped are represented in Table 5.

Table 5:

PROCEDURAL SAFEGUARDS	93-112	93-380	94-63	94-103	94-142
No residence requirements	x	x	x	x	x
Information on all benefits available	x				
No discouragement from receiving benefits	x				
Records stating why applicant was determined ineligible	x				
Hearing examiners, professionals, and clerical personnel to protect the rights of the handicapped	x	x			x
Nondiscrimination-Section 504	x				
Confidentiality of Records		x	x		x
Access to All Records		x			x
Parental Consent for Participation in Program		x			x
Priority to Most Severely Handicapped	x				x
Prior Notice to Parents on Any Change in Program		x			x
Participation of Parent and/or Handicapped Person in Planning and Implementing Program	x	x		x	x
Impartial Due Process Hearings	x	x			x
Independent Educational Evaluation					x
Appointment of a Surrogate Parent		x			x
Establishment of Advocacy Programs	x			x	
Services to enable least restrictive alternative program participation	x	x		x	x
Use of Nondiscriminatory Assessment Materials		x			x
Elimination of inappropriate Institutionalization	x		x	x	x
Coordination of Services Provided	x		x	x	

INDIVIDUALIZED WRITTEN PROGRAMS

The provision for individualized written programs was a congressional response to hearing in which the need for client input in service planning was repeatedly stressed. While particular administrative agencies may interpret individualized planning provisions in complex ways, the textual statements of the three relevant laws are simple and direct. Table 6 summarizes requirements for individualized programs as mandated in each of these laws.

Table 6:

INDIVIDUALIZED PROGRAM REQUIREMENTS	93-112	94-103	94-142
It must be written	x	x	x
It must be developed by:			
Agency representative or coordinator	x	x	x
Handicapped Person and/or the parent or guardian	x	x	x
Program Coordinator		x	
It must be reviewed annually by the persons who developed it.	x	x	x
It must be redeveloped by the persons who developed it.	x	x	x
It cannot be changed without the consent of the persons who developed it	x	x	x
It must specify what services will be provided, when the services will be initiated, and the duration of the services.	x	x	x
It must specify the parties responsible for implementing the plan.		x	
It must state specific long term goals and intermediate objectives.	x	x	x
It must state objective criteria and evaluation procedures.	x	x	x
It must state the present level of functioning			x
It must state the extent of participation in regular programs.			x
It must state the availability of a client assistance project.	x		
It must have as its primary objective the accomplishment of a vocational goal.	x		

Summary

This study has reviewed five significant pieces of legislation enacted by the 93rd and 94th Congresses which are now integrated into the U.S. Statutes-at-Large. These five laws are comprehensive when examined concurrently but restrictive when examined individually. Successful implementation of these laws is a matter of coordination between Federal and State agencies in the provision of services to the handicapped. For example, Congress has called for the coordination of services planned under the Rehabilitation Services Administration with those provided under the Mental Retardation Facilities and Community Mental Health Centers Act of 1963. This coordination of services creates a direct tie between P. L. 93-112 and P. L. 94-103. Another example of continuity of law is seen in P. L. 94-142 which is an extension of Title VI, Part B of P. L. 93-380. Furthermore, a provision of P. L. 94-63, Health Revenue Sharing Act of 1975, calls for the coordination of services between Community Mental Health Centers and all other community agencies, from public to private, and at all levels of government. However, the provision of these comprehensive services remains fragmented and illusive to handicapped individuals, their families and advocates. For instance, vocational rehabilitation services are generally not begun until age sixteen with preliminary efforts starting at age fifteen. This appears limiting for a more severely handicapped population. However, prioritizing of services as stated in P. L. 93-112, P. L. 94-103, and P. L. 94-142 relates to the most severely handicapped and begins with prenatal services to high-risk families.

Clearly, there is a need for a continuous review of laws affecting the handicapped and their integration into the U. S. Statutes-at-Large. For example, Section 504 of P. L. 94-113 (29 U. S. Code 794) is probably the single most significant legal rights mandate found anywhere in the law today. This section was modified

indirectly by P. L. 93-516 and directly by P. L. 95-602. It is crucial for all concerned to understand this section but equally important to know its relationship to provisions in current and future laws. As advocates, we must be concerned with and have knowledge of the mandates of Congress in order to acquire all services needed for handicapped individuals to live at the most independent level possible.

FIVE MAJOR LAWS REVIEWED

Public Law	Title	U.S.Code	Sections
93-112	Rehabiliation Act of 1973	29	700 et seq
93-380	Education Amendments of 1974	20	
	Sec. 513 Family Educational Rights and Privacy Act	20	1232g
	Sec. 514 Pupil Rights	20	1232h
	Sec. 405 Community Schools Act	20	1864
	Sec. 601 Adult Education Act	20	1201 et seq
	Sec. 611 Education of the Handicapped Act	20	1401 et seq
	Sec. 701 National Reading Improvement Program	20	1901 et seq
94-63	Special Health Revenue Sharing Act of 1975	42	
	Sec. 301 Community Mental Health Centers Act	42	2681 et seq
	Sec. 401 Migrant Health Centers Act	42	218 et seq
	Sec. 501 Community Health Centers	42	254 et seq
94-103	Developmentally Disabled Assistance and Bill of Rights Act	42	6000 et seq
94-142	Education for All Handicapped Children Act of 1975	20	1401 et seq

King, John D., & Humphrey, Jackie M. H. An analysis of five major public laws and their impact on the handicapped. Working papers. Department of Special Education, Collegeof Education, University of Texas at Austin, Austin, Texas 78712, 1978.

MAJOR AMENDING LAWS

93-516	Rehabilitation Act Amendments of 1974	29	700 et seq
93-568	White House Conference - Library and Information Services Act	20	1232g
95-561	Education Amendments of 1978	20	
	Repealed	20	1901 et seq
	Amended: Pupil Rights	20	1232h
	Community Schools Act	20	3282
	Adult Education Act	20	1201
	Added: Basic Skills Improvement Program	20	2881 et seq
95-602	Rehabilitation Comprehensive Services	29	700 et seq
	Developmental Disabilities Amendments of 1978	42	6000 et seq
95-622	Community Mental Health Centers Extension Act of 1978	42	2681 et seq
95-626	Health Services and Centers Amendments of 1978	42	
	Migrant Health Centers Act	42	218 et seq
	Community Health Centers Act	42	254 et seq

King, John D., & Humphrey, Jackie M. H. An analysis of five major public laws and their impact on the handicapped. Working papers. Department of Special Education, College of Education, University of Texas at Austin, Austin, Texas 78712, 1978.

Table 1: PRECEDING AMENDED LAWS

Public Law	Title	93-112	93-380	94-63	94-103	94-142
65-178	Vocational Rehabilitation Act of 1917	x				
66-236	Smith-Fess Act	x				
74-271	Social Security Act	x				
74-732	Blind Persons Act (Randolph-Sheppard Act)	x				
78-113	Vocational Rehabilitation Act Amendments of 1943	x				
81-815	Schools Construction Act		x			
81-874	Assistance to Certain Local Agencies		x			
83-531	Cooperative Educational Research		x			
83-565	Vocational Rehabilitation Amendments of 1954	x				
85-864	National Defense Education Act of 1958		x			
87-692	Migrant Health Act			x		
88-164	Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963			x	x	
88-210	Vocational Education Act of 1963		x			
89-10	Elementary and Secondary Education Act of 1965		x			
89-105	Community Mental Health Centers Construction Act Amendments of 1965			x		
89-109	Community Health Centers Extension Amendments of 1965			x		
89-178	Correctional Rehabilitation Study Act of 1965	x				
89-313	Amendments to P. L. 81-815 and 874		x			
89-329	Higher Education Act of 1965		x			
89-333	Vocational Rehabilitation Act Amendments of 1965	x				
89-749	Comprehensive Health Planning and Public Health Service Amendment of 1966			x		
89-750	Elementary and Secondary Education Amendments of 1966		x			x
90-31	Mental Health Amendments of 1967			x		
90-99	Vocational Rehabilitation Amendments of 1967	x				
90-170	Mental Retardation Amendments of 1967				x	
90-174	Partnership for Health Amendments of 1967			x		
90-247	General Education Provisions Act		x			x
90-248	Social Security Amendments of 1967 (Includes Child Health Act of 1967)			x		
90-391	Vocational Rehabilitation Amendments of 1968	x				
90-574	Health Service Amendments of 1968			x		
90-576	Vocational Education Amendments of 1968		x			
91-211	Community Mental Health Centers Amendments of 1970			x		
91-230	Elementary and Secondary Education Act Amendments of 1970		x			x
91-513	Comprehensive Drug Abuse and Control Act of 1970			x		
91-515	Public Health Service Amendments of 1970			x		
91-517	Developmental Disabilities Services and Facilities Construction Amendments of 1970				x	
91-572	Family Planning Services and Population Research Act of 1970					

91-616	Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970			x		
92-255	Drug Abuse Office and Treatment Act of 1972			x		
92-318	Education Amendments of 1972		x			x
92-603	Social Security Amendments of 1972			x		
93-29	Older Americans Comprehensive Services Amendments of 1973		x			
93-45	Health Programs Extension Act of 1973			x		
93-380	Education Amendments of 1974					x
93-641	National Health Planning and Resources Development Act of 1974			x		
93-647	Social Security Amendments of 1974			x		

Table 2: SUBSEQUENT AMENDING LAWS

Public Law	Title	93-112	93-380	94-63	94-103	94-142
93-516	Rehabilitation Act Amendments of 1974	x				
93-568	White House Conference--Library and Information Services Act		x			
94-135	Older Americans Amendments of 1975		x			
94-142	Education for All Handicapped Children Act of 1975		x			
94-194	National Reading Improvement Program Act		x			
94-230	Rehabilitation Act Extension of 1976	x				
94-273	Fiscal Year Adjustment Act		x	x		x
94-278	Health Research and Health Services Amendments of 1976			x		
94-288	Helen Keller National Center for Deaf-Blind Youths and Adults	x				
94-405	Indochina Refugee Children Assistance Act of 1976		x			
94-482	Education Amendments of 1976		x			
94-562	Arthritis, Diabetes and Digestive Disease Amendments of 1976			x		
95-40	Vocational Education Act of 1963		x			
95-49	Education of the Handicapped Amendments of 1977		x			x
95-83	Public Health Service Act			x		
95-112	Education Amendments of 1977		x			
95-207	Career Education Incentive Act		x			
95-292	Social Security Act--End Stage Renal Disease Program--Improvements			x		
95-480	Departments of Labor and Health, Education, and Welfare Appropriations Act, 1979		x	x		x
95-482	Appropriations for Fiscal Year, 1979-Continuance		x			
95-561	Education Amendments of 1978		x			
95-602	Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978	x			x	
95-622	Community Mental Health Centers Extension Act of 1978			x		
95-623	Health Services Research, Health Statistics, and Health Care Technology Act of 1978			x		
95-626	Health Services and Centers Amendments of 1978					

TABLE 3: ELIGIBILITY CRITERIA

PUBLIC LAW 93-112

1. ANY INDIVIDUAL WHO HAS A PHYSICAL OR MENTAL DISABILITY WHICH
   (A) CONSTITUTES A HANDICAP TO EMPLOYMENT
   (B) LIMITS ONE OR MORE MAJOR LIFE ACTIVITY
2. ANY INDIVIDUAL WHO HAS A RECORD OF OR IS REGARDED AS HAVING AN IMPAIRMENT.

PUBLIC LAW 93-380

1. CHILDREN WITH LOW READING OR MATHEMATICS PROFICIENCY.
2. STUDENTS WHO FAIL EDUCATIONAL PROFICIENCY EXAMINATIONS.
3. ADULTS IN NEED OF SKILLS AND TRAINING TO INCREASE THEIR LEVEL OF PARTICIPATION IN SOCIETY.

PUBLIC LAW 94-63

1. INDIVIDUALS REFERRED FOR INSTITUTIONAL TREATMENT.
2. RESIDENTS OF INSTITUTIONS WHOSE PLACEMENT IS INAPPROPRIATE.
3. CHILDREN IN NEED OF MENTAL HEALTH SERVICES.
4. ALL INDIVIDUALS IN NEED OF HEALTH OR MENTAL HEALTH SERVICES.

PUBLIC LAW 94-103

1. INDIVIDUALS WITH MENTAL AND/OR PHYSICAL IMPAIRMENTS MANIFEST BEFORE 22 YEARS OF AGE AND EXPECTED TO BE OF INDEFINITE DURATION.
2. PREGNANT WOMEN.

PUBLIC LAW 94-142

ALL HANDICAPPED CHILDREN FROM 3-21 YEARS OF AGE.

King, John D., & Humphrey, Jackie M. H. An analysis of five major public laws and their impact on the handicapped. Working papers. Department of Special Education, College of Education, University of Texas at Austin, Austin, Texas 78712, 1978.

P. L. 93-112

SEC. 7(Z)-29 U. S. CODE 706(7)

(Z)(A) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (B), THE TERM "HANDICAPPED INDIVIDUAL". MEANS ANY INDIVIDUAL WHO (I) HAS A PHYSICAL OR MENTAL DISABILITY WHICH FOR SUCH INDIVIDUAL CONSTITUTES OR RESULTS IN A SUBSTANTIAL HANDICAP TO EMPLOYMENT AND (II) CAN REASONABLY BE EXPECTED TO BENEFIT IN TERMS OF EMPLOYABILITY FROM VOCATIONAL REHABILITATION SERVICES PROVIDED PURSUANT TO SUB-CHAPTERS I AND III OF THIS CHAPTER.

(B) SUBJECT TO THE SECOND SENTENCE OF THIS SUBPARAGRAPH, THE TERM "HANDICAPPED INDIVIDUAL" MEANS, FOR PURPOSES OF TITLES IV AND V OF THIS ACT, ANY PERSON WHO (I) HAS A PHYSICAL OR MENTAL IMPAIRMENT WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF SUCH PERSON'S MAJOR LIFE ACTIVITIES, (II) HAS A RECORD OF SUCH AN IMPAIRMENT, OR (III) IS REGARDED AS HAVING SUCH AN IMPAIRMENT. FOR PURPOSES OF SECTIONS 503 AND 504 AS SUCH SECTIONS RELATE TO EMPLOYMENT, SUCH TERM DOES NOT INCLUDE ANY INDIVIDUAL WHO IS AN ALCOHOLIC OR DRUG ABUSER WHOSE CURRENT USE OF ALCOHOL OR DRUGS PREVENTS SUCH INDIVIDUAL FROM PERFORMING THE DUTIES OF THE JOB IN QUESTION OR WHOSE EMPLOYMENT, BY REASON OF SUCH CURRENT ALCOHOL OR DRUG ABUSE, WOULD CONSTITUTE A DIRECT THREAT TO PROPERTY OR THE SAFETY OF OTHERS.

P. L. 94-103

SEC. 102(7)-42 U. S. CODE 6001

(7) THE TERM "DEVELOPMENTAL DISABILITY" MEANS A SEVERE, CHRONIC DISABILITY OF A PERSON WHICH--

(A) IS ATTRIBUTABLE TO A MENTAL OR PHYSICAL IMPAIRMENT OR COMBINATION OF MENTAL AND PHYSICAL IMPAIRMENTS;

(B) IS MANIFESTED BEFORE THE PERSON ATTAINS AGE TWENTY-TWO;

(C) IS LIKELY TO CONTINUE INDEFINITELY;

(D) RESULTS IN SUBSTANTIAL FUNCTIONAL LIMITATIONS IN THREE OR MORE OF THE FOLLOWING AREAS OF MAJOR LIFE ACTIVITY: (I) SELF-CARE, (II) RECEPTIVE AND EXPRESSIVE LANGUAGE, (III) LEARNING, (IV) MOBILITY, (V) SELF-DIRECTION, (VI) CAPACITY FOR INDEPENDENT LIVING, AND (VII) ECONOMIC SELF-SUFFICIENCY; AND

(E) REFLECTS THE PERSON'S NEED FOR A COMBINATION AND SEQUENCE OF SPECIAL, INTERDISCIPLINARY, OR GENERIC CARE, TREATMENT, OR OTHER SERVICES WHICH ARE OF LIFELONG OR EXTENDED DURATION AND ARE INDIVIDUALLY PLANNED AND COORDINATED.

SERVICES PROVIDED	93-112	93-330	94-63	94-103	94-142
DIAGNOSTIC EVALUATION	X	X	X	X	X
MEDICAL AND PSYCHOLOGICAL	X		X	X	X
COUNSELING	X		X	X	X
GUIDANCE AND PLACEMENT	X		X	X	
FOLLOW-UP AND FOLLOW-ALONG	X	X	X	X	
FAMILY COUNSELING			X	X	
EDUCATION AND TRAINING	X	X	X	X	X
VOCATIONAL TRAINING	X	X		X	X
EDUCATION	X	X	X	X	X
PERSONAL CARE			X	X	X
RECREATION		X	X	X	X
TRANSPORTATION	X	X	X	X	X
LIVING ARRANGEMENTS		X	X	X	
DAY CARE			X	X	
DOMICILIARY CARE				X	
SPECIAL LIVING ARRANGEMENTS			X	X	
INSTITUTIONAL CARE		X	X	X	X
DE-INSTITUTIONALIZATION			X	X	X
ADVOCACY	X			X	X
SELF OR PARENT INVOLVEMENT IN PROGRAMMING	X	X		X	X
SHELTERED EMPLOYMENT	X			X	
COORDINATION WITH OTHER AGENCIES	X	X	X	X	
AIDS AND DEVICES(TELECOMMUNICATIONS)	X				X
CORRECTIVE SURGERY	X		X		
ON-GOING MEDICAL NEEDS			X	X	
THERAPEUTIC TREATMENT	X		X	X	X
HOSPITALIZATION COSTS FOR TREATMENT	X		X		
MAINTENANCE DURING TREATMENT	X				
RECRUITMENT	X	X		X	X
LICENSES, TOOLS, INITIAL SUPPLIES	X				
INDIVIDUALIZED WRITTEN PROGRAMS	X	X	X	X	X

King, John D., & Humphrey, Jackie M. H. An analysis of five major public laws and their impact on the handicapped. Working papers. Department of Special Education, College of Education, University of Texas at Austin, Austin, Texas 78712, 1978.

PROCEDURAL SAFEGUARDS	93-112	93-380	94-63	94-103	94-142
NO RESIDENCE REQUIREMENTS	X	X	X	X	X
INFORMATION ON ALL BENEFITS AVAILABLE	X				
NO DISCOURAGEMENT FROM RECEIVING BENEFITS	X				
RECORDS STATING WHY APPLICANT WAS DETERMINED INELIGIBLE	X				
HEARING EXAMINERS, PROFESSIONALS, AND CLERICAL PERSONNEL TO PROTECT THE RIGHTS OF THE HANDICAPPED	X	X			X
NONDISCRIMINATION-SECTION 504	X				
CONFIDENTIALITY OF RECORDS		X	X		X
ACCESS TO ALL RECORDS		X			X
PARENTAL CONSENT FOR PARTICIPATION IN PROGRAM		X			X
PRIORITY TO PREVIOUSLY UNSERVED	X				X
PRIORITY TO MOST SEVERELY HANDICAPPED	X				X
PRIOR NOTICE TO PARENTS ON ANY CHANGE IN PROGRAM		X			X
PARTICIPATION OF PARENT AND/OR HANDICAPPED PERSON IN PLANNING AND IMPLEMENTING PROGRAM	X	X		X	X
IMPARTIAL DUE PROCESS HEARINGS	X	X			X
INDEPENDENT EDUCATIONAL EVALUATION					X
APPOINTMENT OF A SURROGATE PARENT		X			X
ESTABLISHMENT OF ADVOCACY PROGRAMS	X			X	
SERVICES TO ENABLE LEAST RESTRICTIVE ALTERNATIVE PROGRAM PARTICIPATION	X	X		X	X
USE OF NONDISCRIMINATORY ASSESSMENT MATERIALS		X			X
ELIMINATION OF INAPPROPRIATE INSTITUTIONALIZATION	X		X	X	X
COORDINATION OF SERVICES PROVIDED	X		X	X	

King, John D., & Humphrey, Jackie M. H. An analysis of five major public laws and their impact on the handicapped. Working papers. Department of Special Education, College of Education, University of Texas at Austin, Austin, Texas 78712, 1978.

P.L. 93-112

SEC. 504-29 U. S. CODE 794

SEC. 504. NO OTHERWISE QUALIFIED HANDICAPPED INDIVIDUAL IN THE UNITED STATES, AS DEFINED IN SECTION 7(Z), SHALL SOLELY BY REASON OF HIS HANDICAP, BE EXCLUDED FROM THE PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE OR UNDER ANY PROGRAM OR ACTIVITY CONDUCTED BY ANY EXECUTIVE AGENCY OR BY THE UNITED STATES POSTAL SERVICE. THE HEAD OF SUCH AGENCY SHALL PROMULGATE SUCH REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE AMENDMENTS TO THIS SECTION MADE BY THE REHABILITATION, COMPREHENSIVE SERVICES, AND DEVELOPMENTAL DISABILITIES ACT OF 1978. COPIES OF ANY PROPOSED REGULATION SHALL BE SUBMITTED TO APPROPRIATE AUTHORIZING COMMITTEES OF THE CONGRESS, AND SUCH REGULATION MAY TAKE EFFECT NO EARLIER THAN THE THIRTIETH DAY AFTER THE DATE ON WHICH SUCH REGULATION IS SO SUBMITTED TO SUCH COMMITTEES.

SEC. 514-20 U.S. CODE 1232H

SEC. 439(A) ALL INSTRUCTIONAL MATERIAL, INCLUDING TEACHER'S MANUALS, FILMS, TAPES, OR OTHER SUPPLEMENTARY INSTRUCTIONAL MATERIAL WHICH WILL BE USED IN CONNECTION WITH ANY RESEARCH OR EXPERIMENTATION PROGRAM OR PROJECT SHALL BE AVAILABLE FOR INSPECTION BY THE PARENTS OR GUARDIANS OF THE CHILDREN ENGAGED IN SUCH PROGRAM OR PROJECT. FOR THE PURPOSE OF THIS SECTION "RESEARCH OR EXPERIMENTATION PROGRAM OR PROJECT" MEANS ANY PROGRAM OR PROJECT IN ANY APPLICABLE PROGRAM DESIGNED TO EXPLORE OR DEVELOP NEW OR UNPROVEN TEACHING METHODS OR TECHNIQUES.

(B) NO STUDENT SHALL BE REQUIRED, AS PART OF ANY APPLICABLE PROGRAM, TO SUBMIT TO PSYCHIATRIC EXAMINATION, TESTING, OR TREATMENT, OR PSYCHOLOGICAL EXAMINATION, TESTING, OR TREATMENT, IN WHICH THE PRIMARY PURPOSE IS TO REVEAL INFORMATION CONCERNING:

(1) POLITICAL AFFILIATIONS;

(2) MENTAL AND PSYCHOLOGICAL PROBLEMS POTENTIALLY EMBARRASSING TO THE STUDENT OR HIS FAMILY;

(3) SEX BEHAVIOR AND ATTITUDES;

(4) ILLEGAL, ANTI-SOCIAL, SELF-INCRIMINATING AND DEMEANING BEHAVIOR;

(5) CRITICAL APPRAISALS OF OTHER INDIVIDUALS WITH WHOM RESPONDENTS HAVE CLOSE FAMILY RELATIONSHIPS;

(6) LEGALLY RECOGNIZED PRIVILEGED AND ANALOGOUS RELATIONSHIPS, SUCH AS THOSE OF LAWYERS, PHYSICIANS, AND MINISTERS; OR

(7) INCOME (OTHER THAN THAT REQUIRED BY LAW TO DETERMINE ELIGIBILITY FOR PARTICIPATION IN A PROGRAM OR FOR RECEIVING FINANCIAL ASSISTANCE UNDER SUCH PROGRAM), WITHOUT THE PRIOR CONSENT OF THE STUDENT (IF THE STUDENT IS AN ADULT OR EMANCIPATED MINOR), OR IN THE CASE OF UNEMANCIPATED MINOR,

INDIVIDUALIZED PROGRAM REQUIREMENTS

	93-112	94-103	94-142
IT MUST BE WRITTEN.	X	X	X
IT MUST BE DEVELOPED BY:			
AGENCY REPRESENTATIVE OR COORDINATOR	X	X	X
HANDICAPPED PERSON AND/OR THE PARENT OR GUARDIAN	X	X	X
PROGRAM COORDINATOR		X	
IT MUST BE REVIEWED ANNUALLY BY THE PERSONS WHO DEVELOPED IT.	X	X	X
IT MUST BE REDEVELOPED BY THE PERSONS WHO DEVELOPED IT.	X	X	X
IT CANNOT BE CHANGED WITHOUT THE CONSENT OF THE PERSONS WHO DEVELOPED IT.	X	X	X
IT MUST SPECIFY WHAT SERVICES WILL BE PROVIDED, WHEN THE SERVICES WILL BE INITIATED, AND THE DURATION OF THE SERVICES.	X	X	X
IT MUST SPECIFY THE PARTIES RESPONSIBLE FOR IMPLEMENTING THE PLAN.		X	
IT MUST STATE SPECIFIC LONG TERM GOALS AND INTERMEDIATE OBJECTIVES.	X	X	X
IT MUST STATE OBJECTIVE CRITERIA AND EVALUATION PROCEDURES.	X	X	X
IT MUST STATE THE PRESENT LEVEL OF FUNCTIONING.			X
IT MUST STATE THE EXTENT OF PARTICIPATION IN REGULAR PROGRAMS.			X
IT MUST STATE THE AVAILABILITY OF A CLIENT ASSISTANCE PROJECT.	X		
IT MUST HAVE AS ITS PRIMARY OBJECTIVE THE ACCOMPLISHMENT OF A VOCATIONAL GOAL.	X		

King, John D., & Humphrey, Jackie M. H. An analysis of five major public laws and their impact on the handicapped. Working papers. Department of Special Education, College of Education, University of Texas at Austin, Austin, Texas 78712, 1978.